No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1994

ENTERPRISE CONSOLIDATED SCHOOL DISTRICT,
by and through Its Board of Trustees,

Petitioner,

v.

THE LAUDERDALE COUNTY, MISSISSIPPI SCHOOL DISTRICT, by and through Its Board of Education, et al.,
and the
QUITMAN, MISSISSIPPI SCHOOL DISTRICT,
by and through Its Board of Trustees, et al.,

Respondents,

Consolidated with

ENTERPRISE CONSOLIDATED SCHOOL DISTRICT,

Petitioner,

v.

QUITMAN CONSOLIDATED SCHOOL DISTRICT,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the traditional equitable defenses of laches and/or equitable estoppel bar a school district's assertion of a constitutional claim seeking to enjoin ongoing racially gerrymandered district lines and interdistrict transfers?

2. Whether, after *Shelley v. Kraemer,* 334 U.S. 1 (1948), a racially charged contract between public bodies such as school districts may be enforced?

3. Whether then existing *de jure* segregation could uphold the constitutionality of a contract based upon invidious discrimination?

4. Whether desegregation decrees for multiple school districts which acted jointly by contract to allow for interdistrict transfers may be modified by the District Court without additional findings of interdistrict acts of desegregation required by *Milliken v. Bradley,* 418 U.S. 717 (1974)?

PARTIES TO THE PROCEEDINGS BELOW

The parties in the Court below were:

Petitioners: Enterprise Consolidated School District, by and through its Board of Education, Stanley Herrington, Chairman, A. P. Kersh, Vice President, Hosea Burns, Billy Wayne Mosley, Michael W. Gunn and Superintendent, Ken Pouncey. The previous Superintendent was Michael D. Taylor.

Respondents: The Lauderdale County School District, by and through its Board of Education, John L. Knight, Wanda McPhail, and Arnold M. Threatt. Current school board members are Gloris Cooper, Ray Davis, John Lee Knight, Bobbie Sherrod, and Arnold M. Threatt.

Quitman Consolidated School District, by and through its Board of Education, Terry Beckman, Mike Whitaker, R. L. Smith, Ray B. McKenzie and Superintendent David Meadows.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDINGS BELOW ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

OPINIONS BELOW 2

JURISDICTION 2

STATUTORY PROVISION INVOLVED 2

STATEMENT 3

A. THE CONTRACTUALLY DRAWN SCHOOL DISTRICT BOUNDARIES AND INTER-DISTRICT TRANSFERS ARISE FROM STATE ACTION BASED ON RACE 3

B. PROCEEDINGS BELOW 7

REASONS FOR GRANTING THE PETITION 8

I. WHETHER THE TRADITIONAL EQUITABLE DEFENSES OF LACHES AND/OR EQUITABLE ESTOPPEL BAR A SCHOOL DISTRICT'S ASSERTION OF A CONSTITUTIONAL CLAIM SEEKING TO ENJOIN ONGOING RACIALLY GERRYMANDERED DISTRICT LINES AND INTERDISTRICT TRANSFERS? 8

II. WHETHER, AFTER *SHELLEY V. KRAEMER*, 334 U.S. 1 (1948), A RACIALLY CHARGED CONTRACT BETWEEN PUBLIC BODIES SUCH AS SCHOOL DISTRICTS MAY BE ENFORCED? 9

TABLE OF CONTENTS – Continued

Page

III. WHETHER THE EXISTING *DE JURE* SEGREGATION COULD UPHOLD THE CONSTITUTIONALITY OF A CONTRACT, BASED UPON INVIDIOUS DISCRIMINATION, WHICH CEDED A VILLAGE TO A RACIALLY IDENTIFIED SCHOOL DISTRICT? 11

IV. WHETHER DESEGREGATION DECREES FOR MULTIPLE SCHOOL DISTRICTS WHICH ACTED JOINTLY BY CONTRACT TO ALLOW FOR INTERDISTRICT TRANSFERS MAY BE MODIFIED BY THE DISTRICT COURT WITHOUT THE ADDITIONAL FINDINGS OF INTERDISTRICT ACTS OF SEGREGATION AS REQUIRED BY *MILLIKEN V. BRADLEY*, 418 U.S. 717 (1974)? 12

CONCLUSION 14

TABLE OF AUTHORITIES

Page

CASES

Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969) (per curiam) 4

Armour v. Nix, No. 16708 (N.D. Ga. 1979), *aff'd*, 446 U.S. 930, 100 S.Ct. 2146, 64 L.Ed.2d 784 (1980) 13

Board of Education of Kiryas Joel v. Grumet, ___ U.S. ___, 114 S.Ct. 2481 (1994) 11

Brown v. Board of Education, 347 U.S. 483 (1954) ..10, 11

City of Richmond v. United States, 422 U.S. 358 (1975) 10

Dotson v. City of Indianola, 514 F. Supp. 397 (N.D. Miss. 1981), *aff'd mem.*, 455 U.S. 936 (1982)..... 9

Evans v. Buchanan, 393 F. Supp 428 (Del. 1975), *aff'd*, 423 U.S. 963, 96 S.Ct. 381, 46 L.Ed.2d 293 (1975) 13

Goldsboro City Board of Ed. v. Wayne County Board of Ed., 745 F.2d 324 (4th Cir. 1984) 12

Hoots v. Pennsylvania, 672 F.2d 1107 (3d Cir. 1982), *cert. denied*, 459 U.S. 824, 103 S.Ct. 55, 74 L.Ed.2d 60 (1982) 13

Jenkins v. Missouri, 807 F.2d 657 (8th Cir. 1986)..... 13

Killingsworth v. Enterprise Consolidated School District, No. 1302(E) (S.D. Miss. 1965)..... 3

Landgraf v. USI Film Corp., ___ U.S. ___, 114 S.Ct. 1483, ___ L.Ed.2d ___ (1994) 8

Marsh v. Alabama, 326 U.S. 501 (1946) 9

Milliken v. Bradley, 418 U.S. 717 (1974) 12, 14

TABLE OF AUTHORITIES – Continued

Page

New York Times v. Sullivan, 376 U.S. 254 (1964) 9

Newburg Area Council Inc. v. Board of Education of Jefferson County, Kentucky, 510 F.2d 1358 (6th Cir. 1974), *cert. denied*, 421 U.S. 931, 95 S.Ct. 1658, 44 L.Ed.2d 882 (1975) 12

Shelley v. Kraemer, 334 U.S. 1 (1948) 9, 10

Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 91 S.Ct. 1267 (1971) 12

Taylor v. Quachita Parish School Board, 648 F.2d 959 (5th Cir. 1981) 14

Taylor v. Quachita Parish School Board, 653 F.2d 136 (5th Cir. 1981) (John R. Brown, Circuit Judge, dissenting) 14

U.S.A. v. Lauderdale School District, C.A. No. 1367(E) (S.D. Miss. 1966) 14

United States v. Board of School Commissioners of Indianapolis, 573 F.2d 400 (7th Cir. 1978), *cert. denied*, 439 U.S. 824, 99 S.Ct. 93, 58 L.Ed.2d 116 (1978) 13

United States v. Hinds County School Board, 423 F.2d 1264 (5th Cir. 1969), *cert. denied*, 396 U.S. 1032 (1970) 4

United States v. Missouri, 388 F. Supp. 1058 (E.D. Mo. 1975), *aff'd*, 515 F.2d 1365 (8th Cir. 1975), *cert. denied sub nom. Ferguson Reorganized School District v. United States*, 423 U.S. 951, 96 S.Ct. 374, 46 L.Ed.2d 288 (1975) 13

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ENTERPRISE CONSOLIDATED SCHOOL DISTRICT,

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QUITMAN CONSOLIDATED SCHOOL DISTRICT,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

The Enterprise Consolidated School District, by and through its Board of Trustees, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals (App., 1-69) is reported at 24 F.3d 671, (5th Cir. 1994). The opinions of the District Court (App., 70-173) are unreported.

JURISDICTION

The Court of Appeals entered its judgment on June 16, 1994 (App., 174). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in relevant part, that:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT

A. THE CONTRACTUALLY DRAWN SCHOOL DISTRICT BOUNDARIES AND INTER-DISTRICT TRANSFERS ARISE FROM STATE ACTION BASED ON RACE.

This action involves three contiguous school districts in east central Mississippi. The Quitman School District and the Enterprise School District comprise the two school districts within Clarke County, Mississippi. The other party is the Lauderdale County School District which comprises all of Lauderdale County, Mississippi, except the area covered by the Meridian Municipal School District. On February 13, 1962, before the passage of the Voting Rights Act of 1965, the Lauderdale County School District and the Enterprise School District entered into a twenty-five (25) year agreement providing that white students from Northeast Clarke County within the Enterprise School District would attend the Clarkdale School of the Lauderdale County School District and that one hundred (100) students from the Meehan area of the Lauderdale School District would attend Enterprise School.

Also, in 1962, Enterprise and Quitman entered into a twenty-five (25) year contract ceding the geographic area roughly comprising the Town of Stonewall from Enterprise to Quitman in return for Enterprise's agreeing to educate all black school age children continuing to reside in Stonewall.

In 1965, private plaintiffs filed a desegregation suit against Quitman, Enterprise, and the Clarke County Board of Education. *Killingsworth v. Enterprise Consolidated*

School District, No. 1302(E) (S.D. Miss. 1965).[1] In 1966 the United States brought a desegregation suit against Lauderdale. *U.S.A. v. Lauderdale School District*, No. 1367(E) (S.D. Miss. 1966).

Next, the United States Supreme Court directed that the Fifth Circuit Court of Appeals issue desegregation orders immediately. *Alexander v. Holmes County Board of Education*, 396 U.S. 19, 20 (1969) (*per curiam*). In response to *Alexander*, the Court of Appeals ordered permanent HEW desegregation plans prepared for thirty (30) school districts in southern Mississippi, including Lauderdale, Enterprise and Quitman, and ordered those plans implemented immediately. *United States v. Hinds County School Board*, 423 F.2d 1264, 1267-68 (5th Cir. 1969), *cert. denied*, 396 U.S. 1032 (1970). Accordingly, court ordered HEW plans were put into effect for all three districts. When the desegregation plans were put into effect, Lauderdale County had one black school, and four white schools. Enterprise had two black schools and two white schools.

After the Court ordered HEW desegregation plans became effective in 1969, the parties continued to act pursuant to their contracts. Stonewall continued to send black students for education at the now desegregated Enterprise Schools; Enterprise continued to send its Northeast Clarke County students to be educated at Clarkdale in Lauderdale County, and Lauderdale County

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[1] Until 1992, Clarke County was one of the school districts in Mississippi which maintained a county-wide administrative Board of Education for overseeing county-wide functions such as transportation and students' transfer issues.

sent their Meehan area children to be educated at Enterprise. Thereafter, Quitman declared the contract with Enterprise void, on the grounds its consideration was racially tainted, and refused thereafter to transfer Stonewall students to Enterprise. Transfers of these same students continued however, up until the date of this litigation, by order on appeal of the Clarke County Board of Education.[2] The Clarke County School Board also continued to order the transfers of the Northeast Clarke County students to Clarkdale until the twenty-five (25) year agreement expired in 1987. The Clarke County School Board soon afterwards ceased to exist, following a change in state law, and the District Court below ordered continued transfers.

The District Court below ordered, by race, a maximum of one hundred twenty-five (125) and a minimum of one hundred (100) black students transferred each year from Stonewall to Enterprise and a maximum of one hundred twenty-five (125) white students and all black students requesting transfers, living in Northeast Clarke County, to attend Clarkdale. The Clarkdale School District was over ninety percent (90%) white; Enterprise, approximately seventy-one percent (71%) white,[3] and Quitman only forty-six percent (46%) white.

The District Court held that the 1969 desegregation plans for Lauderdale, Enterprise and Quitman allowed

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[2] As mentioned *supra*, Footnote 1, the Clarke County Board of Education was abolished in 1992.

[3] Initial student population figures following the Fifth Circuit's ruling show Enterprise is now approximately 91.5% white.

for the interdistrict transfers among these school districts and therefore found continuing jurisdiction to modify transfers to ensure that Court ordered desegregation would continue. The District Court additionally held that it could not reach the issue of the constitutionality of the ceding of the Stonewall territory by Enterprise to Quitman because the passage of so many years barred Enterprise from raising the constitutionality of the contract by the affirmative defenses of laches and equitable estoppel.

The Court of Appeals, without discussing the racial implications involved, reversed the District Court's transfer orders and affirmed the District Court by upholding the contract between Enterprise and Stonewall. The Fifth Circuit Court agreed with the District Court that Enterprise was barred by laches and equitable estoppel. The Fifth Circuit also held that some of the merits of the constitutionality of the contract could be reached, but afforded Enterprise no relief, because, first, the racially charged consideration regarding the education of black Stonewall students was severable from the contract, and, second, that there was no racial discrimination in the consideration because the black students of Stonewall would be attending black schools after the Stonewall contract, just as they had before, whether those schools were in the Quitman School District or the Enterprise School District, and there accordingly was no harm.

B. PROCEEDINGS BELOW

On May 4, 1988, the Lauderdale County, Mississippi School District filed a state court action against the Enterprise School District and the Clarke County Board of Education. Enterprise removed the case to federal court, and filed a counterclaim contending *inter alia*, the agreement was constitutionally void *ab initio* because it fostered segregation.

On June 17, 1988, the Quitman School District filed suit in federal court. Enterprise filed a counterclaim alleging that certain territory, known as the Stonewall area in the Enterprise district, allegedly annexed by Quitman in 1962, actually remained in the Enterprise district because annexation was constitutionally void *ab initio*, being a part of a scheme to maintain the dual school system and segregation of the races in the public schools.

The parties agreed to have the cases tried by the Magistrate Judge. The cases were consolidated on October 26, 1989.

The District Court conducted a first hearing in the consolidated cases on March 6, 1990, and issued its first opinion on July 5, 1991. (App. p. 70) The District Court held a second hearing on December 16, and 17, 1991, and issued its second opinion on June 1, 1992. (App. p. 107) The District Court entered its final judgment on July 10, 1992. (App. p. 160).

The Fifth Circuit entered its judgment on June 16, 1994. (App. p. 174) On August 15, 1994, immediately before school began, on remand, the District Court entered an additional injunction. (App. p. 176).

REASONS FOR GRANTING THE PETITION

I. WHETHER THE TRADITIONAL EQUITABLE DEFENSES OF LACHES AND/OR EQUITABLE ESTOPPEL BAR A SCHOOL DISTRICT'S ASSERTION OF A CONSTITUTIONAL CLAIM SEEKING TO ENJOIN ONGOING RACIALLY GERRYMANDERED DISTRICT LINES AND INTERDISTRICT TRANSFERS?

The decision below has held that " . . . there appears to be no bar under constitutional law to the use of the doctrine of laches . . . " (App. p. 52, n. 37), and held that Enterprise was equitably estopped to challenge the contractual policies to which it had been a party. The Fifth Circuit thus bars the Enterprise School District from changing its earlier position, even if that position is wrong. Enterprise cannot argue that the invidious racial practices to which it was a party in 1962 are now unconstitutional, even though there have been significant changes in the law since Enterprise entered into those agreements.

This Court held last term in *Landgraf v. USI Film Corp.*, ___ U.S. ___, 114 S.Ct. 1483, ___ L.Ed.2d ___ (1994) that changes in the law which impact on prospective equitable relief are to be applied prospectively. Equitable remedies in the form of an injunction operate in the future. Since changes in precedent that come about while the case is pending govern the propriety of injunctive relief, equally, a party should not be estopped from changing its position to comport with newly developed law. Enterprise should be able to invoke changes in the application of the Fourteenth Amendment that have come

about since those days in 1962 when Enterprise compromised itself into a racially discriminatory contract. *Id.* at p. 1501.

Equitable estoppel and laches are rules of law developed by the Court to shape governmental choices as to how competing claims are to be resolved. These choices are as much subject to being overridden by the Fourteenth Amendment when expressed in rules of common law as when held subservient to constitutional interests on actions expressed in statute or regulation. For example, common law rules overriden by the Constitution have been in tort, *e.g., New York Times v. Sullivan,* 376 U.S. 254, 265 (1964), property *e.g., Marsh v. Alabama,* 326 U.S. 501 (1946) and state court enforcement of contracts, *e.g., Shelley v. Kraemer,* 334 U.S. 1 (1948). Equitable estoppel and laches are no different.

Laches has been held not to bar the assertion of fundamental rights such as equal right to the ballot. *Dotson v. City of Indianola,* 514 F. Supp. 397, 400-01 (N.D.Miss. 1981), *aff'd mem.,* 455 U.S. 936 (1982). It would be particularly dangerous to honor the "stay put" doctrines of equitable estoppel and laches against constitutional rights in the State of Mississippi which continues to labor under a heavy burden of its segregationist history.

II. WHETHER, AFTER *SHELLEY V. KRAEMER,* 334 U.S. 1 (1948), A RACIALLY CHARGED CONTRACT BETWEEN PUBLIC BODIES SUCH AS SCHOOL DISTRICTS MAY BE ENFORCED?

In *Shelley v. Kraemer,* 334 U.S. 1 (1948) the United States Supreme Court held that state courts acted in

violation of the equal protection clause if they grant injunctive relief to litigants seeking to enforce privately negotiated racially restrictive covenants. In the case decided here below, the Fifth Circuit Court of Appeals has held that federal courts, acting to interpret state law, have not violated the equal protection clause if they grant injunctive relief to litigants seeking to enforce publically negotiated, racially restrictive contracts between school districts. The decision below stands *Shelley v. Kraemer* on its head. Footnote 38 of the Fifth Circuit decision (App. p. 57) stated as follows:

> In *Shelley v. Kraemer,* 334 U.S. 1 (1948), the Court held a state could not enforce a restrictive covenant to prevent a black person from taking possession of a house. It would have been self defeating to void the original sale of the house containing the restrictive covenant, as that would have broken the chain of title, thus jeopardizing the black purchaser's right of possession. Because this was the very right vindicated by the Court, we reject the idea that an unconstitutional clause in a contract automatically voids the entire contract.

To the contrary, this Court has said that, "an official action, whether an annexation or otherwise, taken for the purpose of discriminating against Negroes on account of their race has no legitimacy at all under our Constitution. . . . " *City of Richmond v. United States,* 422 U.S. 358, 378 (1975).

As a matter of public policy, agreements such as the parties' 1962 contract which provided for attendance of students of one race at a school operated solely for students of that race became void with the ruling in *Brown v.*

Board of Education, 347 U.S. 483 (1954). The primary consideration for the whole agreement was the "assignment of white children from Enterprise" to Clarkdale and black children from Quitman to Enterprise. This illicit racial motivation should void the entire transaction.

III. WHETHER THE EXISTING DE JURE SEGREGATION COULD UPHOLD THE CONSTITUTIONALITY OF A CONTRACT, BASED UPON INVIDIOUS DISCRIMINATION, WHICH CEDED A VILLAGE TO A RACIALLY IDENTIFIED SCHOOL DISTRICT?

The decision here presented for review acknowledged that the annexation of a predominantly white territory by a predominantly white school district might be void. (App. p. 57, n. 39). Nevertheless, the Fifth Circuit decided that the annexation of Stonewall in the 1962 contract was not void because it did not have the effect of increasing segregation, stating, "Neither before, nor immediately after the annexation, did any black student in either of the two school districts go to the same school with a white 'student.' " (App. p. 57).

The insulation of the town of Stonewall in its whiteness is no less a violation of the equal protection clause than the segregation of Kiryas Joel for its religion was a violation of the Establishment Clause. *Board of Education of Kiryas Joel v. Grumet*, ___ U.S. ___, 114 S.Ct. 2481 (1984), at pp. 2490, 2495 and 2504. Children have a right to attend integrated schools. *Brown v. Board of Education*, 347 U.S. 483, 493-94 (1954).

The school districts in this east central region of Mississippi have not achieved the status of unitary school systems; that is, they have not eliminated all vestiges of *de jure* segregation. *Swann v. Charlotte-Mecklenberg Board of Education,* 402 U.S. 1, 15, 91 S.Ct. 1267 (1971). The school districts have an obligation to make "every effort to achieve the greatest possible degree of actual desegregation". *Swann v. Charlotte-Mecklenburg Board of Education,* 402 U.S. 1, 26, 91 S.Ct. 1267, 1281 (1971). The fact that segregation existed before 1962 in Mississippi is not a reason to bind a school district to that history.

IV. WHETHER DESEGREGATION DECREES FOR MULTIPLE SCHOOL DISTRICTS WHICH ACTED JOINTLY BY CONTRACT TO ALLOW FOR INTERDISTRICT TRANSFERS MAY BE MODIFIED BY THE DISTRICT COURT WITHOUT ADDITIONAL FINDINGS OF INTERDISTRICT ACTS OF SEGREGATION AS REQUIRED BY *MILLIKEN V. BRADLEY,* 418 U.S. 717 (1974)?

There is a split of authority in the various circuit courts as to the application of the *Milliken v. Bradley* intra/inter-district rule. Some courts have held that in the absence of a showing of current segregative effect, the fact that an interdistrict transfer program was formerly used in order to maintain racial segregation in districts operating dual school systems does not support an interdistrict remedial order operating into the future, *Compare e.g. Goldsboro City Board of Ed. v. Wayne County Board of Ed.,* 745 F.2d 324 (4th Cir. 1984) with *Newburg Area Council Inc. v. Board of Education of Jefferson County, Kentucky,* 510 F.2d 1358 (6th Cir. 1974), *cert. denied,* 421 U.S. 931, 95 S.Ct.

1658, 44 L.Ed.2d 882 (1975); *Evans v. Buchanan*, 393 F. Supp 428 (Del. 1975), *aff'd*, 423 U.S. 963, 96 S.Ct. 381, 46 L.Ed.2d 293 (1975); *Armour v. Nix*, No. 16708 (N.D. Ga. 1979), *aff'd*, 446 U.S. 930, 100 S.Ct. 2146, 64 L.Ed.2d 784 (1980). On the other hand, where the district court found that two white districts were responsible for the maintenance of a third district as a black district, an interdistrict remedy was followed in *United States v. Missouri*, 388 F. Supp. 1058 (E.D. Mo. 1975), *aff'd*, 515 F.2d 1365 (8th Cir. 1975), *cert. denied sub nom. Ferguson Reorganized School District v. United States*, 423 U.S. 951, 96 S.Ct. 374, 46 L.Ed.2d 288 (1975), *but see Jenkins v. Missouri*, 807 F.2d 657 (8th Cir. 1986). Interdistrict remedies have been held appropriate when in accordance with the standard practice in the area, *United States v. Board of School Commissioners of Indianapolis*, 573 F.2d 400 (7th Cir. 1978), *cert. denied*, 439 U.S. 824, 99 S.Ct. 93, 58 L.Ed.2d 116 (1978), and an interdistrict remedy was required in *Hoots v. Pennsylvania*, 672 F.2d 1107 (3d Cir. 1982), *cert. denied*, 459 U.S. 824, 103 S.Ct. 55, 74 L.Ed.2d 60 (1982). In *Hoots v. Pennsylvania*, school boards intentionally created a district which was 63% black, while nearby districts were made 87% to over 99% white through a process involving the redrawing of school boundaries. Since the violation was interdistrict in nature it required an interdistrict remedy. Though these circumstances described in *Hoots v. Pennsylvania* are similar to the resulting segregative effects in the Mississippi school districts here described, the outcome in the respective desegregations decrees are diametrically opposed. This Court should grant certiorari because of the split of authority on this continually important issue.

There were the interdistrict transfers of Stonewall students as part of the original 1969 desegregation plans. Continuing interdistrict transfers from Quitman to Enterprise would not, therefore, be an original interdistrict remedy, such as prohibited by *Milliken v. Bradley*, 418 U.S. 717, 739-744 (1974). Instead, such transfers are valid orders to augment desegregation. *Cf. Taylor v. Quachita Parish School Board*, 648 F.2d 959, 969-70 (5th Cir. 1981). An annexation or existing joinder of districts, by contract or otherwise, makes student assignments all intradistrict. *Taylor v. Quachita Parish School Board*, 653 F.2d 136 (5th Cir. 1981) (John R. Brown, Circuit Judge, dissenting). It could therefore be valid to order the modification of transfers, or the ending of such a process of transferring students, if the result engendered further desegregation.[4]

CONCLUSION

The Federal Courts assumed jurisdiction in these consolidated cases founded upon on-going desegregation actions. The parties, three contiguous school districts, in

[4] The interdistrict remedy as it relates to the transfer of white students to Lauderdale from Enterprise is a violation of *Milliken*. The amendment to the plan of desegregation of Lauderdale clearly shows that the court dealt with zones in Lauderdale County only. Enterprise was not a party to the Lauderdale County action, and therefore none of its student population was affected by any decision in *U.S.A. v. Lauderdale School District*, C.A. No. 1367(E) (S.D. Miss. 1966), and the transfers maintain a white school which is a vestige of the dual school system.

Mississippi, had by contract and transfer policy perpetuated segregation. In rendering its decision, the Fifth Circuit Court of Appeals applied common law principles of equitable estoppel, laches, and a state law interpretation of contract to uphold the annexation of a village to a school district and enforced student transfers which perpetuated segregation. A question of whether inter or intra district remedies were appropriate was not addressed. Granting certiorari on these issues will supply necessary guidance for school districts in making desegregation choices.

Respectfully submitted,

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The LAUDERDALE COUNTY SCHOOL DISTRICT, By and Through its BOARD OF EDUCATION, John L. Knight, Wanda McPhail, and Arnold M. Treat [sic, Threatt], Plaintiffs-Appellees Cross-Appellants,

v.

ENTERPRISE CONSOLIDATED SCHOOL DISTRICT, by and Through its BOARD OF EDUCATION, Defendant-Appellant Cross-Appellee.

QUITMAN CONSOLIDATED SCHOOL DISTRICT, Plaintiff-Appellant Cross-Appellee,

v.

ENTERPRISE CONSOLIDATED SCHOOL DISTRICT, Defendant-Appellee Cross-Appellant.

No. 92-7501.

United States Court of Appeals,
Fifth Circuit.

June 16, 1994.

School districts filed actions in state and federal court against another district concerning interdistrict transfers of students, payment of transfer funds, and annexation of area by district. After consolidation of cases, the United States District Court for the Southern District of Mississippi, John M. Roper, United States Magistrate Judge, ordered transfer of specific students between districts, ordered payment of transfer funds, and upheld annexation. Appeals were taken. The Court of Appeals, Jerry E. Smith, Circuit Judge, held that: (1) district court's jurisdiction to desegregate school districts did not authorize

order compelling interdistrict transfers, absent finding of any interdistrict segregative violation; (2) school district's failure to transfer students pursuant to terms of agreement with another district was not material breach, and did not terminate contract; (3) school district receiving transferred students did not have any reasonable expectation of payment of funds from transferring district, and thus could not recover under quantum meruit; and (4) school district was equitably estopped from challenging constitutional validity of another district's annexation of area 26 years after annexation.

Reversed in part, affirmed in part, and remanded.

Appeals from the United States District Court for the Southern District of Mississippi.

Before WOOD,[1] SMITH, DUHÉ, Circuit Judges.

JERRY E. SMITH, Circuit Judge:

This is a consolidated case involving three Mississippi school districts: the Lauderdale County School District ("Lauderdale"), and the Enterprise School District ("Enterprise"), and the Quitman School District ("Quitman"). The magistrate judge ordered the transfer of certain students from Enterprise to Lauderdale and from Quitman to Enterprise. We reverse these transfers, but we affirm the other portions of the judgment, regarding interdistrict payments and the annexation of the Stonewall area by Quitman.

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[1] Circuit Judge of the Seventh Circuit, sitting by designation.

I. Facts.

In 1953, the Mississippi legislature passed a law reorganizing the state school system in order to provide separate but equal education for white and black students. 1953 Miss.Laws, Extraordinary Session, ch. 12. All of the school districts in Mississippi were reorganized by July 1, 1957. The three school districts that are parties to this case are Lauderdale, which encompasses all of Lauderdale County except for the City of Meridian; Enterprise, which encompasses the northern third of Clarke County; and Quitman, encompassing the southern two-thirds of Clarke County. Lauderdale County borders Clarke County on the north.

A. Clarkdale School: Pre-desegregation.

Under the 1953 reorganization, Lauderdale County was divided into two school districts, the Meridian Municipal Separate School District, encompassing the City of Meridian and the surrounding area, and Lauderdale, encompassing the remainder of Lauderdale County. The pre-reorganization Clarkdale Line Consolidated School District, which had included territory in both Lauderdale and Clarke counties, was abolished and its territory placed under control of Lauderdale. The unincorporated area of Meehan, located in Lauderdale County along the border of Clarke County, was also brought under Lauderdale's control.

The Clarkdale school,[2] a *de jure* white school during segregation, straddles the border between Lauderdale County and Clarke County. For a number of years, Enterprise and Lauderdale entered into one-year agreements regarding the ownership and operation of Clarkdale. On February 13, 1962, Lauderdale and Enterprise entered into a twenty-five-year agreement (the "Clarkdale agreement") providing that white students from northeastern Clarke County would attend the Clarkdale school and that approximately 100 students in the Meehan area in Lauderdale would attend the all-white Enterprise school in the western part of the Enterprise district.[3]

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[2] The parties sometimes refer to a school as an "attendance center," e.g., "the Clarkdale Attendance Center."

[3] The Clarkdale agreement provided, among other things, that Lauderdale would operate the Clarkdale school; that Enterprise would take over the operation of the school if Enterprise acquired a 51% or greater ownership of the property of the school; that before any principals or teachers were hired at Clarkdale, Lauderdale would submit their names to Enterprise 30 days before hiring them; that Enterprise could object to the hiring of any principals or teachers at Clarkdale; that if Lauderdale refused to consider any such objections, the matter would be submitted to binding arbitration; that the Clarkdale school would be jointly owned by the Lauderdale County Board of Education and the Board of Trustees of the Clarke County Consolidated School District (later the Enterprise school district); that the proportion of ownership would be based upon the respective amounts of money contributed to the school by citizens in the respective counties, the amount contributed by Lauderdale and the Clarke County Consolidated School District, and the amount of state funds allocated to either county district based upon attendance at Clarkdale; that the Clarkdale school should be a "white attendance center" for grades one through twelve; that all "eligible school children" in Northeast

Before desegregation, Lauderdale had one black school, Middleton, which served the entire district. It had four white schools: Northwest (now West), Northeast, Southeast, and Clarkdale.

B. Stonewall: Pre-desegregation.

Under Mississippi's 1953 reorganization plan, Clarke County was reorganized into two districts: the Clarke County Consolidated School District (later Enterprise) and Quitman. Enterprise comprised the northern part of the county, including an area called "Northeast Clarke County," the town of Enterprise, the town of Stonewall, and the area surrounding Stonewall.[4] Quitman comprised the southern part of the county, including the town of

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Clarke County would be assigned by the Clarke County Consolidated School District to attend Clarkdale; that all "eligible school children" in the Meehan area of Lauderdale County would attend the Enterprise attendance center in the Clarke County Consolidated School District; that each school district would pay for transportation of its students attending Clarkdale; that "[a]ll state funds of every description, except transportation funds, shall follow the child, and shall accrue to and be paid directly by the state to the district in which the child actually attends school, and for this purpose the Clarkdale Attendance Center shall be considered to be in the Lauderdale County School District so long as it shall operate the same"; that the total cost of the school would be divided between the districts on the basis of the average daily attendance of students; that the contract would be effective upon approval by the necessary parties and would run for a period of 25 years; and that breach of one part of the agreement would not affect the binding effect of the agreement.

[4] Stonewall and the surrounding area are referred to as the "Stonewall area."

Quitman. In addition to the two school districts, there was the Clarke County Board of Education, which had limited supervisory authority over the transportation of Enterprise and Quitman students and the authority to hear transfer appeals.

Enterprise had a white elementary school, a white high school, a black elementary school, and a black high school and the Stonewall School.[5] Quitman had two black elementary schools, one black high school, one white high school, one white lower elementary school, one white upper elementary school, and the Stonewall School.

In 1962, Enterprise announced that it would convert the Stonewall school, an all-white school, from grades 1-12 to grades 1-6. White parents in Stonewall petitioned to have the Stonewall area detached from Enterprise and annexed to Quitman. The Quitman district passed a resolution to annex the Stonewall area. The Clarke County Board of Education tabled the Enterprise school district's plan to convert the Stonewall school from grades 1-12 to 1-6 and adopted a resolution detaching the Stonewall territory from Enterprise and annexing it to Quitman.

Enterprise and Quitman approved a twenty-five-year agreement providing that all blacks in Stonewall would attend the all-black school in Enterprise and that all state funds would be paid to the district where the student attended school. This agreement was part of a larger

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[5] Enterprise Elementary School, Enterprise High School, Central Elementary School, and Central High School, respectively.

compromise agreement that settled litigation over ownership of Stonewall.

C. Desegregation.

In 1963, the United States brought a desegregation suit against Lauderdale. *United States v. Lauderdale Sch. Dist.*, No. 1367(E) (S.D.Miss.). In the same district court in 1965, private plaintiffs filed a desegregation suit against Quitman, Enterprise, and the Clarke County Board of Education. *Killingsworth v. Enterprise Consol. Sch. Dist.*, No. 1367(E) (S.D.Miss.).

In 1967, the district court in *Killingsworth* instructed Quitman and Enterprise to file desegregation plans. The court tentatively accepted the "freedom of choice" desegregation plan filed by the school districts but, on July 19, 1967, rejected the "freedom of choice" plans and entered a final order that (1) enjoined Enterprise, Quitman, and the Clarke County Board of Education from discriminating on the basis of race or color, (2) held that Enterprise, Quitman and the Clarke County Board shall take affirmative action "to disestablish all school segregation and to eliminate the effects of the dual system," (3) allowed all students, irrespective of race or color to exercise, every year, the choice of which school in their district to attend, (4) held that overcrowding of the particular school chosen will be the only reason for denying the student's choice of which school to attend, and (5) held that there would be no more interdistrict transfers between Enterprise and Quitman "except on terms and by procedures generally applicable regardless of race." Although asked to do so by plaintiffs in *Killingsworth*, the court did not find the

contract of June 11, 1962, between Enterprise and Quitman unconstitutional.

The district court consolidated *Killingsworth, Lauderdale,* and other pending desegregation cases. After consolidation the cases were reported as *United States v. Hinds County School Board.* On July 3, 1969, in a consolidated appeal that included *Lauderdale* and *Killingsworth,* this court reversed and remanded, directing the district courts to request the United States Department of Health, Education, and Welfare ("HEW") to collaborate with the school boards to develop desegregation plans. *United States v. Hinds County Sch. Bd.,* 417 F.2d 852, 856-59 (5th Cir.1969), *cert. denied,* 396 U.S. 1032, 90 S.Ct. 612, 24 L.Ed.2d 1032 (1970). If an individual school board and HEW agreed to a desegregation plan by August 11, 1969, the district courts were to implement the plan if it met constitutional standards. *Id.* at 858. If no such agreement could be reached, the district courts were to implement the HEW plan if it met constitutional standards. *Id.* at 858-59.

HEW filed its plans for all three districts on August 11, 1969. On August 28, 1969, this court extended, at the government's request, the deadline for filing plans from August 11 to December 1. In effect, this allowed the parties additional time to redraft the plans. On October 29, 1969, the Supreme Court vacated the extension of the deadline, directing this court to issue desegregation orders immediately. *Alexander v. Holmes County Bd. of Educ.,* 396 U.S. 19, 20, 90 S.Ct. 29, 29, 24 L.Ed.2d 19 (1969) (per curiam). At its discretion, this court could modify and implement the government plans. *Id.* In response to *Alexander,* this court ordered that all thirty permanent

HEW plans prepared for school districts in the Southern District of Mississippi, including Lauderdale, Enterprise, and Quitman, be implemented immediately. *United States v. Hinds County Sch. Bd.*, 423 F.2d 1264, 1267-68 (5th Cir.1969), *cert. denied*, 396 U.S. 1032, 90 S.Ct. 612, 24 L.Ed.2d 531 (1970).[6]

The August 11, 1969, HEW plan for Lauderdale contained the following majority-to-minority transfer provision:

> Whenever there shall exist schools containing a majority of Negro students, this school district shall permit a student (Negro or white) attending a school in which his race is in the majority to choose to attend another school where space is available, and where his race is in a minority.

Thus, transfers between schools can occur if the student seeking transfer is a minority in the transferee school. The plan also contained a *Singleton* provision prohibiting the interdistrict transfer of students unless the transfers

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[6] This court delayed implementation of a permanent plan for Quitman for one year:

> It appearing that the lack of buildings prevents the immediate implementation of the permanent plan of the Office of Education suggested for the Quitman Consolidated school district, the pupil attendance interim plan of the Office of Education for this district is authorized for use during the remainder of this school term (App. 5). The permanent plan shall be effectuated commencing in September, 1970. This relief is appropriate in view of the similarity between the proposed attendance plan of the school district and that of the Office of Education.

423 F.2d at 1268.

are done on a nondiscriminatory basis and do not increase segregation.[7]

The rest of the segregation plan, which dealt with attendance patterns, was amended by this court so that Lauderdale would be divided into four separate attendance zones of West Lauderdale, Clarkdale, Southeast, and Northeast. *United States v. Lauderdale County Sch. Dist.*, No. E88-0059(L) (5th Cir. 1969) (unpublished). All students living in the zones associated with the West Lauderdale, Clarkdale, and Southeast schools would attend the schools in each of the zones. The students residing in the Northeast zone, which contains both the Middleton school and the Northeast school, would attend the Middleton school if they were in grades 1-6 and the Northeast school if they were in grades 7-12.

In the 1969-70 school year, when the desegregation plans were formulated, Quitman contained 2,929 students, 1,458 (50%) black and 1,471 (50%) white. The desegregation plan projected that Quitman's student population would total 3,146 students, 1,490 (47%) black and 1,656 (53%) white. Enterprise's actual enrollment for the 1970-71 school year was 858 students, 339 (40%) black

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[7] "If the School District grants transfers to students living in the district for their attendance at public schools outside the district, or if it permits transfers into the district of students who live outside the district, it shall do so on a non-discriminatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district or reinforce the dual school system." This provision is named for *Singleton v. Jackson Mun. Separate Sch. Dist.*, 419 F.2d 1211 (5th Cir.1969) (en banc), *rev'd in part sub nom. Carter v. West Feliciana Sch. Bd.*, 396 U.S. 290, 90 S.Ct. 608, 24 L.Ed.2d 530 (1970).

and 519 (60%) white. Enterprise was projected to contain 768 students, 363 (47%) black and 405 (53%) white, in 1969. Clarkdale's actual enrollment as of April 15, 1970, was 553 (80%) white and 142 (20%) black, totaling 695. The HEW plans had projected that Clarkdale's population would be 788 students, 203 (26%) black and 585 (74%) white. Lauderdale's actual student population, as of April 15, 1970, totaled 4,583, of which 1,716 (37%) were black and 2,867 (63%) were white. The projected student population for Lauderdale was 5,078 total, of which 1,926 (38%) were black and 3,150 (62%) were white.

The HEW plans for Enterprise, Lauderdale, and Quitman called for immediate desegregation of all schools. Like the Lauderdale plan, the Enterprise and Quitman plans contained a majority-to-minority transfer provision and a *Singleton* provision.

D. Clarkdale School: Post-desegregation.

After desegregation, the Northeast Clarke County students continued to attend the Clarkdale school. Pursuant to the Clarkdale agreement, Enterprise paid money to Lauderdale for educating its students. But two years before the twenty-five-year agreement expired, Enterprise stopped paying Lauderdale.

When the agreement expired, Enterprise refused to allow any more transfers of its students to Lauderdale. The transfers nonetheless continued to be made under the authority of the Clarke County Board of Education, which overruled Enterprise's denials of requests for transfer.

In the 1991-92 school year, Lauderdale approved the transfer of 50 students from the old Meehan area, consisting of 36 white students, 13 black, and one other. Similarly, the Clarke County board approved the transfer of 309 Northeast Clarke County students, 285 white and 24 black, for attendance at the Clarkdale School in the 1991-92 school year. Enterprise had also accepted transfers under an arrangement with Jasper County under which some 83 white students were currently allowed to transfer into Enterprise.

Beginning with the 1991-92 school year, the magistrate judge forbade any transfers of Alabama residents to Enterprise and forbade the transfer of Alabama residents to either Jasper County or Enterprise. Effective January 1, 1992, the Clarke County board was eliminated under a state-wide reorganization. In 1991-92, Clarkdale had some 1,052 students on its rolls, 10% black and 90% white.

E. Stonewall: Post-Desegregation.

Beginning with the school year 1968-69, Quitman refused to pay Enterprise for educating students transferred from Stonewall and expressly repudiated the June 11, 1962, agreement in 1977. In that school year, 135 black students from the Stonewall area attended schools in Enterprise.

From 1984-85 to 1990-91, an average of 99 black students per year have transferred to Enterprise. The total number of transfer students has grown steadily over the years, with approximately 331 students transferring to

Enterprise for the 1991-92 school year (including 31 students who reside in Quitman but attend Enterprise because their parents or legal guardians are Enterprise instructors or certificated employees). Quitman had denied each requested transfer but was overruled by the Clarke County Board of Education. On January 1, 1992, the Clarke County board was eliminated, and Quitman's denials of the transfers stood.

In 1991-92, Quitman's student population was 2,609; its black student population increased from 50% in 1969 to 54% in 1991-92. Quitman now has four schools: a lower elementary school, an upper elementary school, a junior high school, and a senior high school. In 1991-92, Enterprise educated 819 students, 29% black and 71% white. Of Enterprise's enrollment on September 30, 1991, 47% (396) resided in Enterprise, 37% (300) resided in Stonewall, and 6% resided in Meehan in Lauderdale County.

II. District Court Proceedings.

A. The Litigation.

Lauderdale filed an action in state court against Enterprise and the Clarke County board, seeking a judgment against Enterprise for failing to pay Lauderdale during the final two years of the Clarkdale agreement and during the years after the agreement expired. Enterprise removed the case to federal court and filed a counterclaim, arguing that (1) the Clarkdale agreement had been materially breached by Lauderdale, (2) the Clarkdale agreement was unconstitutional, and (3) the transfer of Enterprise students to Clarkdale violated Lauderdale's 1969 desegregation plan. Enterprise also

sought an injunction against future transfers of Enterprise students to Clarkdale.

Quitman filed suit in federal court against Enterprise and the Clarke County board, seeking injunctive relief to prohibit the transfer of Quitman students to Enterprise. Enterprise filed a counterclaim alleging (1) that the annexation of Stonewall by Enterprise was constitutionally void and (2) that Quitman owed Enterprise for educating the Stonewall students since 1968.

The parties agreed to have the matters tried by the magistrate judge, who consolidated the cases on October 26, 1989. The Concerned Citizens of North Clarke County, Mississippi ("Concerned Citizens") "of North" instead of "of Stonewall" earlier had moved to intervene in the *Quitman v. Enterprise* case, No. E88-0065(L). On October 2, 1989, the magistrate judge denied Concerned Citizen's motion to intervene but granted it *amicus curiae* status. On December 15, 1989, Concerned Citizens filed a motion for relief from the order denying intervention and appealed the denial to this court, which dismissed the appeal of the denial of motion to intervene.[8] The magistrate judge denied Concerned Citizen's motion for relief.[9]

Because of numerous inaccuracies regarding transfers and student addresses, the magistrate judge directed all parties to prepare a statistical compilation of all

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[8] February 13, 1990 (Concerned Citizens had failed to file a timely appellate brief.).

[9] March 1, 1990.

affected students residing in the respective school districts and required accurate address information regarding all transfers. On July 5, 1991, the magistrate judge issued his first opinion, concluding (1) that the Stonewall area was legally annexed to Quitman; (2) that students residing in Northeast Clarke County but who attended Clarkdale should be considered transfer students under Mississippi law; and (3) that Enterprise should be maintained as a viable school district.

On June 1, 1992, the magistrate judge issued a second opinion, concluding (1) that 100-125 black students must be allowed to transfer from the Stonewall area to Enterprise in order to preserve the viability of the Enterprise district, to preserve racial balance, and to perpetuate *Killingsworth;* (2) that Enterprise should recover from Quitman for the years 1987-88 and 1988-89 under MISS. CODE ANN. § 37-19-27, which then required payment of transfer funds between districts in the same county; and (3) that Lauderdale should recover fees from Enterprise for the 1985-86, 1986-87, 1987-88, 1988-89 years, but for no other years.

On July 10, 1992, the magistrate judge issued the final judgment, which adopted by reference the two previous opinions. Under the final judgment, the Stonewall territory was deemed to be part of Quitman. Beginning with the 1992-93 school year, all white students residing in Stonewall would begin attending Quitman schools rather than Enterprise schools. Any white student in Stonewall desiring to attend Enterprise would have to submit a transfer request in accordance with state law. High school sophomores, juniors, and seniors enrolled in Enterprise

schools in the 1991-92 school year could continue to remain in Enterprise until they graduated.

The magistrate judge ordered that, beginning with the 1992-93 school year, Quitman must transfer between 100 and 125 black Stonewall area students to Enterprise.[10] Quitman would pay Enterprise for the students transferred because of the court judgment (i.e., all white students from Stonewall attending Enterprise during the transition years of 1992-93 through 1994-95, and 100 to 125 black students transferred in the years 1992-93 and following years). The magistrate judge ordered Quitman to pay Enterprise $205,596.91 for Stonewall area students who had attended Enterprise schools in the years 1987-88 and 1988-89 ($81,022.00 for 1987-88 and $124,574.91 for 1988-89).

The area of Northeast Clarke County area, as defined in the Clarkdale agreement of February 1962, was deemed to be part of Enterprise. Those students residing in Northeast Clarke County, but attending Clarkdale School, were deemed to be transfer students. The judgment provided for transfers of certain students in Northeast Clarke County to the Clarkdale school. Beginning with the 1992-93 school year, a maximum of 125 whites would be allowed to transfer to Clarkdale. Beginning with the 1992-93 school year, all white students attending Clarkdale during the 1991-92 school year, and all white kindergartners, would attend school in the Enterprise

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[10] Quitman and Enterprise had to allow all requests for transfer by black students up to 125. At least 100 black students had to be transferred, even if fewer than 100 requested a transfer.

school, with the exception of 10th, 11th, and 12th graders, who could remain at Clarkdale. Any black student who attended Clarkdale could continue to attend Clarkdale if he requested a transfer. Enterprise would pay Lauderdale $302,562.30 for educating Enterprise's students during the 1985-86, 1986-87, 1987-88, and 1988-89 years.

On July 23, 1992, Concerned Citizens made a FED.R.CIV.P. 59(e) motion to alter or amend the judgment. Quitman filed a notice of appeal on July 27, 1992; Enterprise filed a notice of appeal on August 7, 1992, and an amended notice three days later; Lauderdale filed a notice of cross-appeal on August 20, 1992.

On November 16, 1992, the magistrate judge entered an order on various post-judgment motions, granting a FED.R.CIV.P. 60(b) motion by Lauderdale for relief from the final judgment, denying Concerned Citizen's rule 59(e) motion, denying Enterprise's motion for modification of injunction pending appeal and regarding assignment and transportation of students, and denying a motion by Lauderdale concerning enforcement and/or clarification of the first opinion and the final judgment. Specifically, the court ordered that, first, the word "maximum" would be replaced by the word "minimum" in the final judgment regarding the number of white Northeast Clarke County students to be transferred by Enterprise to the Clarkdale school. Second, up to forty students in Meehan in Lauderdale County would be transferred to Enterprise.

Third, Enterprise would be responsible, until further notice, for transporting those students from Northeast Clarke County attending the Clarkdale School. Fourth, all

siblings of children transferred either from Enterprise to Clarkdale or from Stonewall to Enterprise under the magistrate judge's authority would also be allowed to be transferred. Fifth, all students with parents working in the Clarkdale School or the Enterprise schools would be allowed to transfer to the school where their parents are employed.

On November 30, 1992, Quitman filed a rule 59(e) motion to alter or amend the November 16 order. The magistrate judge has not yet disposed of Quitman's rule 59(e) motion. Each party has filed notices of appeal of the November 16 order.

The judgment went into effect at the beginning of the 1992-93 school year. Its transfer provisions were phased in during the school years 1992-93 and 1993-94 and were to be fully applied in the 1994-95 school year.

B. The Parties' Positions on Appeal.

Lauderdale's position on appeal is that we should affirm the transfer of students to Clarkdale and, furthermore, that Enterprise owes it money for students transferred during the 1989-90 and 1990-91 academic years, not just during the 1985-89 years. Enterprise argues that the magistrate judge erred by ordering transfers from Northeast Clarke County to the Clarkdale school, that it should not be required to pay money to Lauderdale for educating its students, and further, that it should not be required to bus students to Clarkdale. Quitman argues that the magistrate judge erred by transferring 100 to 125 black students from the Stonewall area to Enterprise and that it does not owe any money to Enterprise for previous

transfers. Quitman agrees with the magistrate judge's decision to allocate the Stonewall area to the Quitman district.

With respect to the Stonewall area, Enterprise argues that the magistrate judge erred in holding that the annexation to Quitman was valid. In the event that the annexation is affirmed, Enterprise contends that the transfer of black students from Stonewall to Enterprise should be affirmed. Enterprise would even want the transfers increased. Concerned Citizens of Stonewall, Clarke County, Mississippi, as *amicus*, argues that the Stonewall annexation is invalid and that the Stonewall area should be returned to Enterprise.

III. Appellate Jurisdiction.

A. Finality.

The July 10, 1992, judgment is a final judgment and, as such, is reviewable on appeal. Under 28 U.S.C. § 1291, a court of appeals has jurisdiction over final, appealable orders of a district court. 28 U.S.C. § 1291. In order for a judgment to be final, it must dispose of all claims of the parties:

> In the absence of [a Rule 54(b) action], any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

FED.R.CIV.P. 54(b).

An examination of the July 10 judgment reveals that it disposed of all claims of all parties. Regarding *Quitman v. Enterprise,* the magistrate judge adjudicated the validity of the Stonewall annexation, ordered a transfer of 100-125 black students from Stonewall to Enterprise, and resolved all monetary issues between Quitman and Enterprise. Regarding *Lauderdale v. Enterprise,* the magistrate judge ordered that Northeast Clarke County was part of Enterprise, directed the transfer of students from Northeast Clarke County to Lauderdale, required that those students would be considered transfer students, and resolved all monetary issues between Lauderdale and Enterprise.

Although the magistrate judge granted two post-judgment motions on November 16, 1992,[11] the original July 10 judgment covered all the subject matter of the parties' claims. Therefore, the July 10 judgment was final and appealable.

For purposes of finality, we need not consider whether the two cases, *Lauderdale v. Enterprise,* No. E88-0059(L), and *Quitman v. Enterprise,* No. E88-0065(L), are one suit or two. The July 10 judgment disposes of all issues in both of the cases. The judgment therefore is final, whether the suits are treated as one case or two.

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[11] The two post-judgment motions were Lauderdale's rule 60(b) motion for relief from the final judgment and Lauderdale's motion for modification of injunction pending appeal.

B. Notices of Appeal.

In determining whether the notices of appeal were proper, we apply the recent amendments to the Federal Rules of Appellate Procedure. Although this appeal was filed before the effective date of the amendments, courts should apply the amendments "to the maximum extent possible" if such application would not "not [sic] work injustice." *Burt v. Ware*, 14 F.3d 256, 259 (5th Cir. 1994).[12]

If the two cases are considered as one, then the operative notices of appeal are as follows: Quitman's July 27, 1992, notice of appeal of *Quitman v. Enterprise*, Enterprise's August 7, 1992, notice of appeal of both cases, and Lauderdale's August 20, 1992, notice of appeal of *Lauderdale v. Enterprise*. Quitman's and Enterprise's notices were filed within thirty days of the July 10, 1992, judgment. Lauderdale's notice of cross-appeal was filed thirteen days after Enterprise's notice of appeal. Therefore, Lauderdale's notice of appeal was valid under FED.R.APP.P. 4(a)(3), which provides that

> [i]f one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice of appeal was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period last expires.

If the two cases are considered separately for notice of appeal purposes, the notices were proper in both cases. In *Lauderdale v. Enterprise*, the parties filed their notices of appeal as follows: Enterprise on August 7, 1992, and

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[12] The effective date of the amendments was December 1, 1993.

Lauderdale on August 20, 1992. Enterprise's notice was filed within thirty days of July 10. Lauderdale timely filed its notice of appeal on August 20, within fourteen days of Enterprise's.

Notices of appeal were also proper in *Quitman v. Enterprise.* The parties filed their notices of appeal as follows: Quitman on July 27, 1992, and Enterprise on August 7, 1992. Both notices of appeal were timely filed within thirty days of July 10. Thus, whether the two cases are considered together or separately, the notices of appeal are timely.

C. Concerned Citizens's Rule 59(e) Motion.

Concerned Citizens is not a party to the case, having been denied intervenor status on two occasions. Enterprise and Quitman argue, therefore, that Concerned Citizen's rule 59(e) motion is invalid and does not affect the validity of the notices of appeal.

FED.R.APP.P. 4(a)(4) provides that the time for appeal, usually thirty days, runs from the entry of an order disposing of certain motions, including a motion to alter or amend judgment under rule 59. Because rule 4(a)(4) applies only if a "*party* makes a timely motion of a type specified immediately below" (emphasis added), it would seem that a motion by a non-party would not defer the thirty-day window.[13] We need not determine whether

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[13] *But see Thurman v. FDIC*, 889 F.2d 1441, 1448 (5th Cir. 1989) (holding that a motion for new trial filed by a person who was later determined to have been improperly denied

Concerned Citizens's motion was valid, however, as under the amended appellate rules the validity of Concerned Citizens's motion does not affect the notices of appeal.

If a party makes a rule 59(e) motion, the thirty-day period starts on the day the district court disposes of the motion. *See* FED.R.APP.P. 4(a)(4). Any notice of appeal filed after the final judgment, but before the disposition of the rule 59(e) motion, automatically becomes effective when the district court disposes of the rule 59(e) motion. *Id.* ("A notice of appeal filed after announcement or entry of the judgment but before entry of any of the above motions is ineffective to appeal from the judgment or order, or part thereof, specified in the notice of appeal, until the date of the entry of the order disposing of the last such motion outstanding.").

Therefore, even if the rule 59(e) motion were valid, the thirty-day period would have commenced on November 16, 1992, the day the district court disposed of the rule 59(e) motion. The three notices of appeal were effective on November 16, 1992.

D. The Post-judgment Order.

The magistrate judge entered a post-judgment order on November 16, 1992. On November 30, 1992, Quitman

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intervenor status was sufficient to trigger the provisions of rule 4(a)(4)); *Boggs v. Dravo Corp.*, 532 F.2d 897, 900 (3d Cir. 1976) (the word "party" in FED.R.APP.P. 4(a)(4) "was never intended to operate as a restrictive rule limiting those who could bring a motion which would have the effect of terminating the time for appeal.").

filed a rule 59(e) motion to alter or amend the order. Soon afterward, each party filed a notice of appeal of the post-judgment order.[14] As the magistrate judge has not yet disposed of Quitman's rule 59(e) motion, these notices of appeal are ineffective. FED.R.APP.P. 4(a)(4). Thus, we are unable to review the magistrate judge's post-judgment order of November 16, 1992.

Our answer would not be different if the rule 59(e) motion by Concerned Citizens were a valid rule 59(e) motion for purposes of rule 4(a)(4)(C). Such a motion would have deferred the effectiveness of the notices of appeal until the motion's disposition on November 16, 1992. On that date, the final judgment would be immediately reviewable on appeal. Because of Quitman's rule 59(e) motion of November 30, 1992, we would still be unable to review the post-judgment order.

One might argue that Quitman's rule 59(e) motion, ostensibly filed in the *Quitman v. Enterprise* case, defers the notices of appeal only in that case and this court still would have appellate jurisdiction over that portion of the post-judgment order pertaining to the other consolidated suit, *Lauderdale v. Enterprise*. We reject such a contention. The two cases were consolidated for the purposes of trial and final judgment. Suits that are consolidated in district court *for trial* and disposed of by one final judgment are considered the same case for the purposes of notices of appeal. *Barnett v. Petro-Tex Chem. Corp.*, 893 F.2d 800, 805

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[14] Enterprise filed a notice of appeal on December 1, 1992, Quitman on December 16, and Lauderdale on December 18.

(5th Cir.), *cert. denied*, 497 U.S. 1025, 110 S.Ct. 3274, 111 L.Ed.2d 784 (1990).

Therefore, we cannot review the contents of the post-judgment order, whether those contents relate to *Lauderdale v. Enterprise*, *Quitman v. Enterprise*, or both. Specifically, we cannot review the replacement of the word "maximum" with the word "minimum," the transfer of forty students from Meehan to Enterprise, the allocation to Enterprise of the responsibility for busing students from Northeast Clarke County to the Clarkdale school, the transfer of siblings, or the transfer of children with parents employed by the Clarkdale school or the Enterprise school.

IV. Clarkdale Transfers.

The magistrate judge ordered the transfer of a maximum of 125 white students, and all black students requesting transfers, living in Northeast Clarke County, to attend Lauderdale's Clarkdale school. The magistrate judge reasoned that, first, the students were closer to Clarkdale and, second, the 1969 desegregation plans for Lauderdale and Enterprise assumed that the transfers would continue.[15] Enterprise argues that the magistrate

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[15] The magistrate judge stated:

> Although we have decided that the Northeast Clarke County students attending Clarkdale are transfer students, this will not prohibit transfers to Clarkdale. Initially, it would make little sense [sic, from] an academic standpoint to require all Northeast Clarke County students to travel multiple distances to attend Enterprise School when a school constructed for their

judge's transfer of students to Clarkdale should be reversed because (1) Enterprise was not a party to the Lauderdale litigation, (2) the transfers violated the Lauderdale desegregation plan, (3) there is no evidence of a constitutional violation by Enterprise, and (4) the transfers threaten Enterprise's viability as a district.[16] Because there has been no finding of a interdistrict segregative act with a substantial, direct, and current segregative effect,

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benefit is located several miles away. Further, this Court finds that the transfer issue was properly before the Court in *USA v. Lauderdale County School District*, Cause No. 1367. During the litigation of *Lauderdale County School District*, students residing in Northeast Clarke County were attending Clarkdale. Interrogatories submitted by Lauderdale showed the total number of students residing in Northeast Clarke County and attending Clarkdale. During the *Killingsworth* litigation, Enterprise represented to the Court and submitted a map showing the Northeast Clarke County students attending Clarkdale. Moreover, Enterprise stipulated that its school district is divided into two (2) attendance areas – Enterprise and Clarkdale. Lastly, as part of an objection to its HEW desegregation plan, Enterprise submitted statistical compilations showing Northeast Clarke County students attending Clarkdale. In short, the Court finds sufficient evidence to conclude that both the district court and the Fifth Circuit Court of Appeals were aware that Northeast Clarke County students were attending Clarkdale when desegregation plans were approved for Enterprise and Lauderdale and the Court envisioned such transfers would continue.

[16] Apparently, neither party challenges the Meehan transfers, which, as we have pointed out earlier, are not reviewable by this court.

and because the 1969 court orders do not compel student transfers, we reverse the magistrate judge's transfers.

In 1962, Lauderdale and Enterprise agreed that white students from the northeastern Clarke County area in Enterprise would attend Clarkdale and that approximately 100 students in the Meehan area in Lauderdale would attend the Enterprise school. When the agreement expired, Enterprise refused to allow any more transfers of its students to Lauderdale. Enterprise's denials of requests for transfer were overruled by the Clarke County Board of Education until the board was eliminated effective January 1, 1992.

The magistrate judge ordered interdistrict transfers, even though neither party had requested it to do so.[17] Lauderdale asked only for monetary damages in its state court action. Enterprise in its counterclaim requested only that the 1962 Clarkdale agreement be declared void and that Lauderdale and the Clarke County board be enjoined from ordering the transfer of students to Clarkdale. But the fact that neither party requested interdistrict transfers does not by itself preclude the district court from ordering such transfers. The district court retains jurisdiction to desegregate the schools of

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[17] *See Milliken v. Bradley*, 418 U.S. 717, 745, 94 S.Ct. 3112, 3127, 41 L.Ed.2d 1069 (1974) ("With no showing of significant violation by the 53 outlying school districts and no evidence of any interdistrict violation or effect, *the court went beyond the original theory of the case as framed by the pleadings* and mandated a metropolitan area remedy.") (emphasis added).

Lauderdale and Enterprise.[18] The district court also has the power to enforce the HEW plan for Lauderdale as well as this court's amendments to the plan.

There is no question that federal courts can stop segregation-promoting transfers of students between school districts, place restrictions upon the transfers such as the *Singleton* provision contained in many of the HEW plans, and remedy violations of *Singleton* clauses. It is a different question, however, whether a court can order the interdistrict transfer of students. For example, if a school district violates the *Singleton* provision, the appropriate remedy is to end the illegal transfers, not to order broad interdistrict relief:

> A finding that a school district has accepted transfer students in violation of a *Singleton* clause customarily supports injunctive relief forcing an end to such transfers and compliance with the terms of the desegregation order. A finding that a district has violated a *Singleton* transfer provision included in its desegregation order does not, in and of itself, support a broader, interdistrict remedial order unless the conduct which violated the *Singleton* clause also comprised an interdistrict constitutional violation when evaluated under *Milliken*.

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[18] *See Davis v. E. Baton Rouge Parish Sch. Bd.*, 721 F.2d 1425, 1434 (5th Cir.1983) ("Until [a] unitary system has been achieved, a district court overseeing the desegregation effort must retain jurisdiction to insure that the present effects of past segregation are completely removed." (citing *Green v. County Sch. Bd.*, 391 U.S. 430, 439, 88 S.Ct. 1689, 1695, 20 L.Ed.2d 716 (1968))).

Lee v. Lee County Bd. of Educ., 639 F.2d 1243, 1261 (5th Cir.1981).

We evaluate the propriety of court-ordered transfers between districts under the standard enunciated in *Milliken v. Bradley*, 418 U.S. 717, 94 S.Ct. 3112, 41 L.Ed.2d 1069 (1974),[19] in which the Court considered the district court's plan to integrate the city of Detroit district, a predominantly black district, with the predominantly white school districts in the surrounding suburbs. The Court reversed the segregation plan. Although *de jure* segregation existed in Detroit, the district court had made no finding that the suburban school districts had violated the constitution or that such a violation had an interdistrict effect:

> Before the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must first be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district. Specifically, it must be shown that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of interdistrict segregation. Thus an interdistrict remedy might be in order where the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent

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[19] The magistrate judge held that under Mississippi law, students in Northeast Clarke County attending Clarkdale are considered interdistrict transfer students. Neither party contests this holding.

> district, or where district lines have been deliberately drawn on the basis of race. In such circumstances an interdistrict remedy would be appropriate to eliminate the interdistrict segregation directly caused by the constitutional violation. Conversely, without an interdistrict violation and interdistrict effect, there is no constitutional wrong calling for an interdistrict remedy.

Id. at 744-45, 94 S.Ct. at 3127.

This court has noted that *Milliken* requires that an interdistrict remedy be imposed only upon "proof of unconstitutional governmental action that has been a substantial cause of a significant interdistrict segregative effect." *Lee*, 639 F.2d at 1256 (internal quotations omitted). In *Lee*, a school district comprising the city of Auburn, Alabama, had been carved out of the larger school district encompassing Lee County. The county and city school districts reached an agreement whereby some county students would be transferred to city schools. Because a dual school system existed in both districts, the black students were transferred from their all-black county schools to all-black city schools. Likewise, the white students were transferred from all white schools in the county to all-white schools in the city. We held that these past interdistrict transfers did not justify continuing interdistrict remedies:

> [T]he fact that an interdistrict transfer program was formerly used in order to maintain racial segregation in districts operating dual school systems does not support an interdistrict remedial order unless it is established that these transfer programs have a substantial, direct and

> *current* segregative effect. In the absence of such a showing of current segregative effect, . . . no interdistrict remedy is appropriately ordered upon the basis of earlier interdistrict transfer programs.

Id. at 1260.

In the past, Enterprise transferred only its white students to Clarkdale. With the adoption of the HEW plan in 1969, transfers could occur only if done on a nondiscriminatory basis and if they did not reduce desegregation. Thee is no record evidence that the predesegregation transfers have a "substantial, direct, and current segregative effect."

Neither the Enterprise desegregation plan nor the Lauderdale desegregation plan, as amended, requires that students continue to be transferred from Enterprise to Lauderdale. The plans make no mention of any transfers from Enterprise to Clarkdale. From this silence, Lauderdale urges us to infer that the plans intended the transfers to continue, even after the Clarkdale contract had expired. We infer the opposite. The courts and the HEW in 1969 knew that the contract would expire at the end of school year 1986-87, and yet they made no provision to mandate the transfers. We conclude that the 1969 desegregation plans do not mandate the continued transfer of students from Northeast Clarke County to the Clarkdale school.

Enterprise makes a number of other arguments that we need not consider. It contends that the continued viability of the Enterprise school district is essential to

the desegregation plan, that the magistrate judge's transfer of students from Enterprise to Clarkdale violates the desegregation plan, that the transfers are void because they significantly contribute to the segregation of the Clarkdale school, and that Enterprise should not be affected by Lauderdale's desegregation order.

Because there is no proof that the predesegregation transfers of students from Northeast Clarke County to Clarkdale had any substantial, direct, and current segregative effect, we reverse the magistrate judge's order transferring students from Northeast Clarke County to Clarkdale. We do not, of course, bar Lauderdale and Enterprise from agreeing to future transfers as provided by Mississippi education law. Such transfers, though, must comport with the *Singleton* provisions of the desegregation plans.

V. Payments for Clarkdale Transfers.

Lauderdale and Enterprise honored the Clarkdale agreement for twenty-three years of its twenty-five-year term. One notable change during that period was that, beginning with the January 1970 semester, all students, not just white students, residing within the Northeast Clarke County area of Enterprise were transferred for attendance at the Clarkdale school, and all students, not just white students, residing within the Meehan area of Lauderdale desiring to attend were transferred to Enterprise.

Sometime in the 1970's, Lauderdale refused to transfer students in the Meehan area to Enterprise, in violation

of the Clarkdale agreement.[20] Beginning with the academic year 1985-86, Enterprise refused to pay Lauderdale for the students transferred from Northeast Clarke County to Clarkdale.[21] Lauderdale demanded attendant funds from Enterprise for a six-year period commencing with the 1985-86 school year and continuing through the 1990-91 school year.[22]

In determining how much money was in dispute, the magistrate judge was aided by the fact that the formula for determining attendant funds for the first two of the six school years was contemplated by the parties in their February 13, 1962, contract. Furthermore, Lauderdale and Enterprise have stipulated to the contract formula, figures, calculations, as well as the accuracy of the compilation for those two years. They have also stipulated to the average daily attendance ("ADA") figures for the academic years 1985-86 through 1991-92 as follows:

ADA of Northeast Clarke County students attending Clarkdale

1985-86 – 248.32
1986-87 – 265.75
1987-88 – 263.15
1988-89 – 277.92
1989-90 – 278.31
1990-91 – 266.44

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[20] So stipulated by the parties.

[21] The parties have so stipulated.

[22] Its first demand was made in February 1988.

ADA of Meehan area (Lauderdale) students attending Enterprise

1985-86 – 39.37
1986-87 – 38.85
1987-88 – 37.94
1988-89 – 38.10
1989-90 – 31.19
1990-91 – 40.91

The magistrate judge ordered that Enterprise pay Lauderdale for Clarkdale transfer students during the academic years 1985-86 and 1986-87 and during academic years 1987-88 and 1988-89, but not during 1989-90 and 1990-91. The magistrate judge ordered Enterprise to pay for those interdistrict transfers ordered by the district court for the years 1991-92 and subsequent years. Finding no error, we affirm.

A. 1985-86, 1986-87.

The magistrate judge held that Enterprise had breached its duty to pay attendant funds to Lauderdale and ordered Enterprise to pay Lauderdale $29,237.54 for the year 1985-86 and $74,355.05 for the year 1986-87. These amounts were readily calculated under the Clarkdale agreement.

1. No Material Breach by Lauderdale.

Enterprise argues that Lauderdale breached the Clarkdale agreement because it failed to transfer all of its

Meehan area students to Enterprise as agreed.[23] This breach, Enterprise argues, voided the agreement and relieved Enterprise of the obligation to pay Lauderdale.

Under Mississippi law, material breach by either party terminates a contract. A breach is material if (1) a party fails to perform a substantial part of the contract or one or more of its essential terms or conditions, (2) the breach substantially defeats the contract's purpose, or (3) the breach is such that upon a reasonable construction of the contract, it is shown that the parties considered the breach as vital to the existence of the contract. *UHS-Qualicare v. Gulf Coast Community Hosp.*, 525 So.2d 746, 756 (Miss. 1987).

Despite Lauderdale's failure to transfer its Meehan students, Enterprise continued to meet its obligations under the contract without objecting to the method of transportation of the Meehan students for several years. As a result, the magistrate judge held that the failure to transport must not have been a breach of an essential term or condition of the contract, that the failure did not substantially defeat the purpose of the contract, and that the parties did not consider the term to be vital to the existence of the contract. We agree. In addition, article

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[23] The pertinent provision of the Clarkdale agreement is article VIII, which reads, "The eligible school children of the Lauderdale County School District residing in [the Meehan area] shall be and they are hereby assigned and legally transferred by [the Board of Trustees of the Clarke County Consolidated School District of Lauderdale County, Mississippi, later the Enterprise school district] to the Enterprise Attendance Center of the Clarke County Consolidated School District or its successor for the full term of this agreement."

XVI of the Clarkdale agreement provides that breach of one part of the agreement does not justify breach of its other parts.[24]

2. Enterprises's Offset Argument.

Enterprise argues that it should recover damages for Lauderdale's failure to transfer the Meehan students and that these damages should offset any damages awarded to Lauderdale. We reject Enterprise's argument on procedural grounds.

In its original answer in state court, Enterprise argued that Lauderdale's breach provided Enterprise with an affirmative defense to its own contract breach:

> Third Defense
>
> Affirmative
>
> The plaintiff has failed to perform as required by said contract. The plaintiff has wholly failed for approximately ten years to perform pursuant to Paragraph III of said agreement. The plaintiff has wholly failed to perform pursuant to Paragraphs VIII and IX of said agreement for at least a twenty year period in that it did not assign, transfer and transport all children in the geographical area eligible under the agreement to the Enterprise School District.

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[24] Article XVI provides, "The breach of any part of this agreement by either party thereto shall not alter the binding effect of all other covenants and agreements herein contained upon both of said parties."

> And now having fully answered said complaint, these defendants respectfully pray that the Complaint for Declaratory Judgment filed herein against them be dismissed at the cost of the plaintiff.

The next section of Enterprise's answer is labeled "Counterclaim," thus indicating that Enterprise meant to raise the Meehan breach as an affirmative defense rather than a counterclaim. The counterclaim section ended with the following requests for relief, none of which relates to the Meehan transfers: that the Clarkdale agreement be declared null and void, that attempts by the Clarke County board and by Lauderdale to transfer Northeast Clarke County students be declared null and void, that Lauderdale be enjoined from accepting such students, that the Clarke County board be enjoined from transferring or transporting such students, and that Enterprise be awarded reasonable attorneys' fees and court costs.

Ordinarily we would need to consider whether Enterprise's claim against Lauderdale for breach of contract is a counterclaim, and, if so, whether Enterprise's failure to raise the counterclaim waives the claim under FED.R.CIV.P. 13(a). Furthermore, we might need to consider whether Enterprise's argument was erroneously pled as an affirmative defense and whether the district court abused its discretion in refusing to treat the argument as a counterclaim. *See* FED.R.CIV.P. 8(c). We need not address these issues, however, as Enterprise raises the argument that it should recover damages for the Meehan breach for the first time on appeal, so we decline to consider the argument. *See Oliver v. Collins*, 914 F.2d 56, 60 (5th Cir.1990).

3. Void As Unconstitutional.

Enterprise alleges that the Clarkdale agreement is unconstitutionally void because it provided that Clarkdale would be a "white attendance center." Before 1970, only white students in Northeast Clarke County were able to transfer to Clarkdale; black students continued to attend the segregated black school in Enterprise.

In September 1970, this course of conduct changed. Lauderdale and Enterprise began to transfer students of both races, presumably in order to comply with the *Singleton* provision of the HEW plans for each respective school district.

Under Mississippi state law, the subsequent actions of the parties may modify the contract to an extent consistent with the subsequent course of conduct. *Broome Constr. Co. v. Beaver Lake Recreational Ctr.*, 229 So.2d 545, 547 (Miss.1969). We believe that the Clarkdale agreement was modified so as to permit the transfer of blacks. Therefore, the agreement is not unconstitutionally void, and the magistrate judge did not err in relying upon the agreement to award Lauderdale recovery for the 1985-86 and 1987-87 [sic] academic years.

B. 1987-88, 1988-89.

The Clarkdale agreement expired at the end of the 1986-87 year. Thereafter, any rights of Lauderdale to payment were governed by Mississippi law. During the school years 1987-88 and 1988-89, MISS.CODE ANN. § 37-19-27 read:

> Legally transferred students going from one school district to another shall be counted for teacher allotment and allotments for supportive services by the school district wherein the pupils attend school, including maintenance costs, but shall be counted for transportation allotment purposes in the school district which furnishes or provides the transportation. When such transfer shall be from school district to another, the superintendent of schools of the school district from which said students are transferred shall, within thirty (30) days after a request in writing to do so by the superintendent of schools of the other school district, issue his warrant in an amount equal to the total number of pupils attending the school from such school district multiplied by the average expenditure pupil in the school district from which the pupils are transferred, on the maintenance fund to pay any sums due hereunder to the said school district wherein the said students are attending. His failure to do so shall render him liable therefor in the amount thereof on his official bond.

1986 Miss.Laws ch. 492, § 104 (amended 1989).

The basic purpose of the statute was to require local funds to follow transfer students. To that end, the statute required the district superintendent of the transferring school district to request in writing that the superintendent of the receiving school district issue his warrant identifying the funds requested.

Lauderdale did make such a request in writing for the funds due from Enterprise. Enterprise District Superintendent Michael Taylor brought the request to the attention of the Enterprise board, which unanimously voted not to pay funds to Lauderdale. As a result, Taylor failed to issue his warrant.

The magistrate judge held that a forfeiture of Taylor's official bond would be inequitable because his actions were controlled by his school board. The magistrate judge awarded Lauderdale $96,731.95 for the 1987-88 school year and $102,237.76 for the 1988-89 school year. Enterprise does not dispute this award on appeal.

C. 1989-90 and 1990-91.

The magistrate judge refused to award Lauderdale any student money for 1989-90 and 1990-91.[25] In 1989, § 37-19-27 was amended to require school boards approving student transfers to enter into contracts for the payment or non-payment of any portion of their local maintenance funds that they deem fair and equitable. Because Lauderdale and Enterprise did not enter into any such arrangement, the magistrate judge held that neither party was obligated to pay transfer funds for the years beginning with the year 1989-90.

Lauderdale does not dispute the magistrate judge's interpretation of MISS.CODE ANN. § 37-19-27 but argues that it should recover funds under the theory of quantum meruit. In order to recover under quantum meruit, a

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[25] Apparently, no question of attendant funds for the years 1991-92 was litigated.

plaintiff must show (1) that it rendered services under the reasonable expectation that it would be paid and (2) that the defendant knew that the services were being performed with the expectation that it would pay for the work. *Redd v. L & A Contracting Co.*, 246 Miss. 548, 151 So.2d 205, 209 (1963).

Lauderdale argues that Enterprise should have known that Lauderdale expected payment because Lauderdale had made written demands on Enterprise. The Mississippi statutory scheme belies Lauderdale's argument. The Mississippi statutes, beginning in 1989, required school boards to enter into agreements to divide money allocated to transfer students. MISS.CODE ANN. § 37-19-27. Because the Clarke County board failed to enter into an agreement, and because the twenty-five-year contract had expired, it had no reasonable expectation of payment from Enterprise.

D. 1992-93 and Subsequent Years.

For 1992-93 and subsequent years, the district court ordered Enterprise to transfer certain students to Clarkdale and ordered Enterprise to make payments to Lauderdale for the transfers. Although we reverse the transfers, we affirm that Enterprise should pay for any transfers made under the authority of the magistrate judge.

VI. Stonewall Annexation.

The magistrate judge held that the Stonewall area had been validly annexed by Quitman for two reasons.

First, Enterprise was equitably estopped from arguing that the Stonewall area was improperly annexed to Quitman. Second, Quitman's control over the Stonewall area would comport with *Killingsworth*. We agree.

In 1957, pursuant to 1953 Mississippi Laws, Extraordinary Session, chapter 12, the schools of Clarke County were reorganized into the Enterprise and Quitman districts. Enterprise (then the Clarke County Consolidated School District) comprise the northern third of Clarke County, including the Stonewall area. Quitman (then the Quitman Consolidated School District) comprised the southern two-thirds of Clarke County. The state laws created a county school board with limited authority over both districts.

After reorganization, Enterprise's two *de jure* black schools, an elementary school and a high school, served black students in Enterprise and Stonewall. The two *de jure* white schools in Enterprise, an elementary school and a high school, served all the white students in the district, with the exception of the white students living in the Stonewall area, who attended the Stonewall school.

In March 1961, the Enterprise board announced an intention to convert the Stonewall school to an elementary school for grades one through six.[26] Stonewall students in grades seven through twelve would be required to attend the *de jure* white Enterprise high school. Upon learning of the Enterprise board's intent to convert the Stonewall school, parents and community members of Stonewall filed a petition requesting the detachment of

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[26] March 5, 1962.

the Stonewall area from Enterprise and annexation to Quitman.[27] The petition contained a total of 639 qualified electors of the Stonewall area.

The Quitman board unanimously passed a resolution approving the annexation of the Stonewall area, which would "become effective when approved as required by law, on July 1, 1962."[28] Over the objections of some of the citizens of the Stonewall area, the Enterprise board adopted a long-range plan providing for the conversion of the Stonewall school.[29] The next day, Enterprise met with the Clarke County board concerning the long range plan and the annexation of the Stonewall area to Quitman. At this meeting, the Clarke County board tabled Enterprise's long-range plan and adopted a resolution detaching the Stonewall territory from Enterprise and annexing it to Quitman.

Enterprise appealed the Clarke County board's annexation decision to the Circuit Court of Clarke County. *Griffin v. Clarke County Bd. of Educ.*, No. 6176 (Miss. Ch. filed Mar. 23, 1962). The citizens of the Stonewall area filed an injunction against Enterprise in the Chancery Court of Clarke County. *Green v. Cooper*, No. 6788 (Miss Ch. filed Mar. 30, 1962). The complaint alleged that Enterprise, in seeking to convert the Stonewall school, acted arbitrarily, capriciously, and without regard to the general welfare, health, and morals of the affected students. Moreover, the complaint alleged that Enterprise

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[27] March 10, 1962.

[28] March 12, 1962.

[29] March 13, 1962.

did not have the facilities to accept the 216 white Stonewall students in grades six to eleven who would be required to attend the white Enterprise school.

The Clarke County board adopted a resolution disapproving the conversion of the Stonewall school. The resolution stated that Enterprise did not have sufficient existing facilities properly and adequately to teach students in grades seven through twelve without the Stonewall high school.[30] The Clarke County board was granted leave to intervene in the *Green v. Cooper,* No. 6788 (Miss Ch. filed Mar. 30, 1962), to enjoin Enterprise from converting the Stonewall school.[31] Enterprise filed a petition for writ of certiorari against the Clarke County board, seeking to set aside the board's resolution disapproving the conversion of the Stonewall school. *Williams v. Riley,* No. 6182 (Miss.Cir.Ct. filed May 1, 1962).

After these suits were filed, Enterprise and Quitman entered into extensive negotiations in an attempt to resolve the problems surrounding the Stonewall area. On May 15, 1962, the Enterprise and Quitman boards, Clarke County's and Quitman's superintendents, a member of the State Educational Finance Commission, the Executive Secretary of the State Educational Finance Commission, four members of the Clarke County board, and two citizens of the Stonewall territory met and discussed at length the annexation of Stonewall and other proposals for the continued education of the students living in the Stonewall area.

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[30] April 2, 1962.

[31] April 13, 1962.

Enterprise and Quitman entered into a compromise memorialized in scattered documents, school board minutes, and an agreement dated June 11, 1962.[32] The

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[32] The most important sources of the agreement are a proposal by the Enterprise superintendent, a counterproposal by the Quitman superintendent, and the agreement of June 11, 1969, between Enterprise and Quitman. The proposal of the Enterprises superintendent reads:

I The suit of *Green vs. Cooper* (Injunction) to be dismissed.

II *Williams vs. Riley* (6182) in Circuit Court dismissed (Appeal from order of County Board of Education April 2 disapproving District Board order of March 5).

III Order of April 2 of County Board to be rescinded.

IV Order of March 5 of Clarke County District Board to be amended in Section I(b) to read as follows: "Grades 1 through 8 to be taught at Stonewall".

V *Griffin vs. Board of Education* (6176) Appeal on Bill of Exceptions from transfer of territory dismissed.

VI Order of County Board of Education of March 14 to be rescinded (Transfer of Territory).

VII *Stewart vs. Rathburn* dismissed.

VIII All high school students now attending Stonewall to be transferred to any attendance center which will accept them and pro rata share of District and state funds and teacher units to follow child. Buses to be run to Enterprise and Quitman, all other transfers will furnish their own transportation.

IX Long Range Plan of March 13th to be amended as follows and approved by district and county boards.

1. Stonewall School to have grades 1-8.
2. Construction and renovation immediately with equal priority of Items 2, 3, 5, 6 and 7, total cost – $110,000.00.
3. Item 4 next priority.

X State funds, 16th Section Funds and $45,000.00 negotiable notes to be used to finance improvements to be made this summer.

magistrate judge found that the compromise consisted of six major parts: (1) The Stonewall territory would be detached from Enterprise and annexed to Quitman, (2) all black students residing in the Stonewall area would be transferred to the all-black schools located in Enterprise; (3) state funds would be paid to the school district where the student attends school, (4) the agreement would be effective upon approval by the Clarke County board and the State Education Finance Commission, (5) *Griffin v. Clarke County Board of Education*,[33] *Green v. Cooper*,[34] and

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The counter-proposal from the superintendent of Quitman to the president of the Clarke County board proposed an agreement whereby, among other things, Quitman agreed that it would transfer children living in the Stonewall area to the black school in the Clarke County district and that Quitman would agree not to operate a high school in Stonewall during the 1962-63 school year. The letter began, "Relative to the proposed annexation of the former Stonewall Consolidated School District to the Quitman Consolidated School District." The letter noted that the Quitman school board had adopted, by motion, the contents of the letter on June 5, 1969.

The June 11, 1969, agreement provided that all blacks in the Stonewall area would be transferred from Quitman to Enterprise, that state funds for each student should be paid to the district at which the child attends, that the agreement would be effective upon approval by the Board of Education of Clarke County and the State Education Finance Commission, and that the agreement should continue for 25 years.

[33] No. 0176 (Miss. Ch. filed Mar. 23, 1962) (the annexation appeal case).

[34] No. 6788 (Miss. Ch. filed Mar. 30, 1962) (the Stonewall injunction case).

Williams v. Riley[35] would be dismissed, (6) and the agreement would continue for a period of twenty-five years.

On June 11, 1962, the Enterprise and Quitman boards approved the transfer of blacks from Quitman and Enterprise. On June 12, 1962, the Clarke County board approved the June 11, 1962, agreement. On June 18, 1962, the Mississippi Educational Finance Commission approved the annexation of the Stonewall territory and the June 11, 1962, agreement. For ease of discussion, we refer to the entire compromise as the "Stonewall compromise agreement" and the June 11, 1962, agreement related to transfers as the "June 11, 1962, agreement."

On May 21, 1965, suit was filed in federal district court against Enterprise, Quitman, and the Clarke County board, seeking to dismantle the dual school system being operated in Clarke County. *Killingsworth v. Enterprise Consolidated Sch. Dist.*, No. 1302(E). Quitman and Enterprise, pursuant to the preliminary orders entered in the *Killingsworth* case, submitted desegregation plans that incorporated a grade-by-grade "freedom of choice" concept. These plans were tentatively accepted on August 5, 1965, and revised on September 22, 1966.

Through discovery, the *Killingsworth* plaintiffs were made aware of the June 11, 1962, agreement. On June 14, 1967, the plaintiffs filed for supplemental relief, requesting the district court to declare the June 11, 1962, agreement unconstitutional. In its final order, issued July 19, 1967, the district court in *Killingsworth* did not decide

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[35] No. 6182 (Miss.Cir.Ct. filed May 1, 1962) (Enterprise's petition for certiorari).

the constitutionality of either the June 11, 1962, agreement or the annexation of Stonewall by Quitman.

The *Killingsworth* court's final order held that the previously approved "freedom of choice" plans failed to meet the standards for desegregation. The court specifically enjoined Enterprise, Quitman, and the Clarke County board from discriminating on the basis of race or color, ordered Enterprise, Quitman and the Clarke County board to take affirmative "action to disestablish all school segregation and to eliminate the effects of the dual school system," allowed all students irrespective of race or color to exercise their choice of which school to attend in their respective school districts, held that overcrowding of the particular school chosen would be the only reason for denying a student's choice of which school to attend, and held that there would be no interdistrict transfers between Enterprise and Quitman "except on terms and by procedures generally applicable regardless of race."

On July 3, 1969, this court reversed and remanded *Killingsworth,* requiring desegregation plans to be implemented by August 27, 1969. The court further ordered that if no plan were submitted by the respective school districts, HEW could file a desegregation proposal on August 11, 1969, and the parties could object thereto. On August 11, 1969, HEW filed separate desegregation plans for Enterprise and Quitman. Enterprise objected to its HEW plan, filing a motion to strike and to stay action on the plan.

The HEW plans for both Enterprise and Quitman called for immediate desegregation of all schools, including teachers and staff members. Intradistrict transfers are

not allowed under the plans unless the student seeking the transfer would be a minority in the transferee school. The *Singleton* provisions in the plans permitted a school board to grant interdistrict transfers only "on a non-discriminatory basis, except that it shall not consent to transfer when the cumulative effect will reduce desegregation in either district or reinforce the dual school system" On November 6, 1969, this court ruled that the desegregation plans filed by HEW would be implemented immediately.

For each school year between 1968-69 and 1990-91, some students residing in the Stonewall area filed petitions requesting transfers form Quitman to Enterprise. The procedure has been as follows:

> (1) Quitman for each school year after 1968-69 had consistently denied such requests for transfer by Stonewall students to attend school in the Enterprise School District.
>
> (2) Such Stonewall students, upon being denied approval of their transfer requests by Quitman, have appealed to the Clarke County Board of Education to overrule the action of Quitman in denying such requests for transfer; and
>
> (3) In each and every case after 1968-69 the Clarke County Board of Education has overruled Quitman and approved the requests for transfers.

The Mississippi legislature phased out county-wide boards of education effective January 1, 1992. Consequently, the appeal process by which some Stonewall students attended Enterprise was eliminated.

The magistrate judge held that Enterprise was equitably estopped from arguing that Stonewall was not annexed to Quitman and that the annexation was resolved in *Killingsworth*. Enterprise argues that the entire 1962 Stonewall agreement is void because it is unconstitutional. Enterprise contends that the annexation of Stonewall by Quitman cannot be legally separated from the transfer of all black Stonewall children to Enterprise and that both actions should be voided. We disagree. The annexation should be viewed separately from the rest of the agreement. By itself, the annexation is constitutional.

A. Equitable Estoppel

Equitable estoppel requires three elements: "(1) Belief and reliance on some representation; (2) Change of position as a result thereof; (3) Detriment or prejudice caused by the change of position." *Suggs v. Town of Caledonia*, 470 So.2d 1055, 1057 (Miss.1985) (citing *Covington County v. Page*, 456 So.2d 739 (Miss.1984)). The magistrate judge held that Enterprise made a representation that the Stonewall territory was lawfully a part of Quitman, that Quitman had sufficiently relied upon these representations, and that Quitman suffered detriment as a result of Enterprise's representations.

Enterprise admitted that Stonewall belonged to Quitman during the pendency of *Killingsworth*. During a December 3, 1969, hearing, Enterprise submitted as evidence a map showing the Stonewall area as part of Quitman. Enterprise's superintendent testified under oath that the Stonewall territory was annexed to Quitman in 1962. The transcript of the hearing reads:

Q: We've indicated on the map introduced into evidence by stipulation known as the Stonewall area, when was that area detached from the Enterprise School District and made a part of the Quitman district?

A: I believe this was in 1962.

Furthermore, in its objection to HEW's desegregation plan for Enterprise, Enterprise admitted that Stonewall was part of Quitman. Enterprise's objection reads:

> The foregoing facts demonstrate beyond doubt that [Enterprise] is dependent for its financial solvency, the quality of its educational program and its very existence upon pupils who reside outside of [Enterprise] but who have elected to attend the schools administered by [Enterprise].
>
> If and when Stonewall Elementary School is closed, the Enterprise Elementary School must be prepared to accommodate additional students form the *Stonewall Attendance Zone of the Quitman Consolidated School District, who will, without doubt, elect to attend school at Enterprise.*

(emphasis added). For over twenty-six years, from June 1962 until June 17, 1988, when suit was filed, Enterprise did nothing to indicate that the Stonewall area had not lawfully been annexed to Quitman.

On appeal, Enterprise asserts that a representation may not be used as a basis for equitable estoppel unless the other party is ignorant of the true facts. *See Chapman v. Chapman*, 473 So.2d 467, 470 (Miss.1985). Although it is true that Quitman was fully aware of the facts surrounding the annexation, Quitman was unaware that Enterprise would suddenly challenge the annexation after decades

of acquiescence. Equitable estoppel applies to parties who take inconsistent positions. *See United States v. Dallas County Commission*, 548 F.Supp. 794, 872-75 (S.D.Ala.1982), *aff'd in part, rev'd in part on other grounds*, 739 F.2d 1529 (11th Cir. 1984), and authorities cited therein.

Enterprise also argues that the doctrine of equitable estoppel cannot be used to bar the invocation of constitutional rights. The admittedly sparse authority on applicability of equitable estoppel indicates the opposite. Two district courts have held that parties were equitably estopped from arguing constitutional violations. In *Williams v. City of Dothan*, 745 F.2d 1406 (11th Cir.1984), the district court applied equitable estoppel, although the court of appeals reversed on the ground that the elements of equitable estoppel had not been met. *Id.* at 1410. In *Dallas County Commission*, the district court, in an alternative holding, held that a party was equitably estopped from arguing a constitutional right. 548 F.Supp. at 872-75. The doctrine of laches, which is similar to equitable estoppel,[36] may prevent a plaintiff from enjoining changes effected without pre-clearance as required by the Voting Rights Act of 1965.[37] *Lopez v. Hale County*, 797

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[36] A party asserting laches must show "(1) a delay in asserting a right or claim; (2) that the delay was not excusable; and (3) that there was undue prejudice to the party against whom the claim is asserted." *Save Our Wetlands, Inc. (SOWL) v. United States Army Corps of Engineers*, 549 F.2d 1021, 1026 (5th Cir.), *cert. denied*, 434 U.S. 836, 98 S.Ct. 126, 54 L.Ed.2d 98 (1977).

[37] Although there appears to be no bar under constitutional law to the use of the doctrine of laches, under Mississippi law "the State is not responsible for the laches of its officers." *Bd. of*

F.Supp. 547, 550-52 (N.D.Tex.1992) (three-judge court), *aff'd mem.*, ___ U.S. ___, 113 S.Ct. 954, 122 L.Ed.2d 112 (1993); *but see Dotson v. City of Indianola*, 514 F.Supp. 397, 400-01 (N.D.Miss.1981). Enterprise therefore lacks legal support for its argument that equitable estoppel is inapplicable to constitutional claims.

Enterprise argues that equitable estoppel is inapplicable to a governmental entity that is asserting the constitutional rights of a large group of people. We have found no authority to support such a proposition.

Enterprise also claims that, in a suit against a state political subdivision, the doctrine of equitable estoppel applies only if the plaintiff is a private individual and not another state political subdivision. *Board of Trustees v. Rye*, 521 So.2d 900 (Miss. 1990) the case cited by Enterprise, holds, however, that the doctrine *may* apply to suits by private individual against political subdivisions. It does not foreclose application in other circumstances: "The State, its counties, subdivisions and municipalities may be equitably estopped under the proper circumstances." 521 So.2d at 908-09.

Enterprise argues that Quitman's belief in the validity of the annexation did not harm Quitman. We disagree. Quitman planned, budgeted, forecasted, funded, hired teachers and staff members, paid taxes, and maintained school property since June 11, 1962, under the assumption that the Stonewall territory was properly annexed. Although Quitman received tax revenues from

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Trustees of Monroe County Bd. of Educ. v. Rye, 521 So.2d 900, 908 (Miss.1988).

property in the Stonewall district, Quitman was deprived of state funding for those students who transferred to Enterprise.

Next, Enterprise claims that it affirmatively made demands on Quitman to pay money to Enterprise. But this has nothing to do with Enterprise's failure to argue that it owned the Stonewall area, or its representations that it did not own the Stonewall area. We therefore agree with the magistrate judge that Enterprise is equitably estopped for challenging the validity of the Stonewall annexation.

B. *Killingsworth.*

The magistrate judge held that *Killingsworth* adjudicated ownership of the Stonewall area. Enterprise disagrees, arguing that the issue of annexation was never directly litigated in *Killingsworth*, and therefore it should not be inferred that the *Killingsworth* court approved the Stonewall annexation.

The final desegregation orders in *Killingsworth* were based upon interdistrict boundaries that assumed the validity of the annexation of Stonewall by Quitman. Although neither the three-judge district court nor this court in *Killingsworth* specifically ruled on the validity of the annexation, they did not have cause to do so. All parties, including Enterprise, represented to the court that the annexation was valid. Thus, it is not surprising that the record in *Killingsworth* reveals no debate about the validity of the Stonewall transfers. We agree with the magistrate judge that it is far too late for Enterprise to protest the annexation.

C. Separability.

Enterprise argues that the annexation of Stonewall is void because it is tainted by the unconstitutionality of the June 11, 1962, transfer agreement. The magistrate judge treated the annexation of Stonewall and the transfer of black students from Stonewall as a part of a larger agreement. The magistrate's factual finding is not clearly erroneous. *See* FED.R.CIV.P. 52(a). But even assuming that the Stonewall annexation and June 11, 1962, transfer agreement are linked, the annexation is not void.

The annexation of Stonewall was completed under procedures provided by state law. School districts in Mississippi are political subdivisions, and state law provides procedures for changing their boundaries. In 1962, the statutory annexation procedure was contained in MISS.CODE ANN. § 6274-06, which provided:

> If a petition signed by a majority of the qualified electors of specifically described territory of an existing school district shall be filed with the county board of education requesting that said described territory be taken from such existing district and annexed to an adjacent district, the county board of education, after consideration thereof, and with the consent and approval of the board of trustees of the district to which such territory is to be annexed, shall have the power and authority, in its discretion to take such territory from the existing district and annex same to the adjacent district. However, before doing so, the county board of education must find and determine that the taking of the territory from the existing school district will not seriously interfere with or impair the efficiency of such school district, and all orders

> adopted under the provisions of this section shall be invalid unless such finding and determination be made.

A review of the record show that the necessary steps were fulfilled. A petition was filed with the Clarke County Superintendent of Education on March 10, 1962; the Quitman board consented to the annexation on March 12, 1960; the Clarke County board consented to the annexation on March 14, 1960. It was only later that Enterprise sued to challenge the annexation (*Griffin v. Clarke County Bd. of Educ.*). We accept as true the magistrate judge's finding that Enterprise's court challenge was dropped as part of the Stonewall compromise agreement, an agreement that included that June 11, 1969, contract. We are unable to tell from the record why Enterprise dropped its legal challenge to the annexation. Perhaps Enterprise believed that its receipt of transfer students and their attendant funds compensated it for dropping the lawsuit; or, perhaps Enterprise's appeal had no legal merit.

An action by a state or its political subdivisions pursuant to established political procedures is not unconstitutional merely because the support for such an action is garnered through the promise of an unconstitutional agreement. Thus, the annexation is not void merely because Quitman's agreement to transfer the black Stonewall students may have procured Enterprise's agreement to drop its lawsuit.

Enterprise argues that if any part of an unconstitutional agreement is void, all of its provisions must be voided. Even assuming that the political act of annexation can be linked to the rest of the compromise agreement,

we find Enterprise's argument unpersuasive. None of the authorities cited by Enterprise stands for the proposition that an entire agreement is void if one of its parts or provisions is unconstitutional.[38]

D. Constitutional Validity of Annexation.

A boundary change is void only if it contributes to segregation.[39] The Stonewall annexation did not have the effect of increasing segregation. Neither before, nor immediately after the annexation, did any black student in either of the two school districts go to the same school with a white student. The Stonewall annexation was no more promotive of segregation than was any of the other pre-desegregation boundary changes among Mississippi's school districts. As Quitman points out, Stonewall originally belonged to the Quitman school district and was later transferred to Enterprise under Mississippi's 1953 school reorganization. If all school district boundary changes during segregation were constitutionally void,

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[38] One case actually seems to show the opposite. In *Shelley v. Kraemer*, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948), the court held a state could not enforce a restrictive covenant to prevent a black person from taking possession of a house. It would have been self-defeating to void the original sale of the house containing the restrictive covenant, as that would have broken the chain of title, thus jeopardizing the black purchaser's right of possession. Because this was the very right vindicated by the Court, we reject the idea that an unconstitutional clause in a contract automatically voids the entire contract.

[39] For example, the annexation of a predominantly white territory by a predominantly white school district might be void.

then both the original transfer of Stonewall to Enterprise, and its later return to Enterprise, are void. Thus, Stonewall would belong to Quitman.

E. Material Breach by Quitman.

Enterprise argues that Quitman materially breached the agreement by failing to pay money to Enterprise for students transferred form Quitman to Enterprise. Enterprise claims that, therefore, it is not obligated to honor the part of the agreement transferring Stonewall to Quitman. But even though Quitman stopped honoring the transfer agreement in 1968, only now does Enterprise claim that the annexation is void because of Quitman's "material breach." Just as Enterprise is equitably estopped from arguing that the annexation is void as unconstitutional, Enterprise is equitably estopped from arguing that the annexation is void for material breach by Quitman.

VII. Transfers from Stonewall to Enterprise

The magistrate judge ordered the transfer of 100 to 125 black students from the Stonewall area to Enterprise. Quitman opposes the transfer, arguing that the transfer is not necessitated by *Killingsworth* and that there has been no showing of constitutional violation. We agree with Quitman and reverse the magistrate judge.

The Stonewall area is lawfully annexed to the Quitman district. Therefore, the transfer of black students ordered by the magistrate judge is an interdistrict transfer properly analyzed under *Milliken*. There has been no

showing of a government action with substantial direct, or current segregative, effect. *See Lee*, 639 F.2d at 1260.

The annexation of Stonewall was not an interdistrict act of segregation, nor was the transfer agreement. Mississippi schools were completely segregated before the transfers. After the transfers, they were still completely segregated. Furthermore, the transfer agreement has no current segregative effect, because it is no longer operable. Absent a finding of an interdistrict act, segregative intent, and a continuing segregative effect, the magistrate judge had no discretion to order the transfer of students from Stonewall to Quitman.

Killingsworth did not require the interdistrict transfers from Quitman to Enterprise. The orders of the three-judge court in *Killingsworth* were reversed. *United States v. Hinds County Sch. Bd.*, 423 F.2d 1264 (5th Cir.1969), *cert. denied*, 396 U.S. 1032, 90 S.Ct. 612, 24 L.Ed.2d 531 (1970). This court did nothing more than order immediate implementation of the HEW plans for Enterprise and Quitman. Although the HEW plans prohibited certain interdistrict transfers, they did not affirmatively mandate any transfers.

Merely because the *Killingsworth* court was aware of interdistrict transfers does not mean it approved of them. *See United States v. Hinds County Sch. Bd.*, 516 F.2d 974, 975 (5th Cir.1975) (holding that the fact that the 1969 order did not dismantle school bus routes designed for a segregated school system does not mean that the order approved of the bus routes). Furthermore, the *Killingsworth* courts were aware that the transfer agreement would end in twenty-five years. Thus, if awareness

is equated with approval, *Killingsworth* actually would require the cessation of interdistrict transfers under the June 11, 1962, agreement.

The magistrate judge believed that the transfers of black students from Stonewall was essential to maintain Enterprise. Since the *Killingsworth* desegregation order, Enterprise has had a total student enrollment between 768 and 858. The Enterprise superintendent testified that in order to maintain its accreditation, the school needs from 900 to 1,110 students. The magistrate judge crafted his order so that enough students attended Enterprise for it to remain viable.

The decision of this court eliminating transfers both to and from the Enterprise will not significantly reduce the Enterprise school system. Even so, we do not think that Enterprise's viability should be a dominant factor in drafting interdistrict transfers. If insufficient students are transferred to Enterprise by court order, the consequences are not necessarily disastrous. Enterprise could get more students by transferring more students from other districts, so long as these transfers comport with the desegregation orders and Mississippi state law. Enterprise could attempt to annex more territory, subject to the same conditions. If these methods fail, the Enterprise district could be dissolved, provided that the district court is satisfied that the elimination of the district would not reduce desegregation.

In conclusion, the transfer is not necessary to remedy an interdistrict violation, to comply with the *Killingsworth* order, to maintain Enterprise's viability. The magistrate

judge abused his discretion in ordering the transfer of students from Stonewall to Enterprise.

VIII. Funds for Students Transferred from Stonewall.

Enterprise seeks to recover money from Quitman for Stonewall students transferred from Quitman to Enterprise. Because the applicable Mississippi law has changed over the years, we approach this issue chronologically.

A. 1968-69 Through 1986-87.

The magistrate judge held that Enterprise should recover from Quitman for the years 1987-88 & 1988-89 but not for previous and subsequent school years. Finding no error, we affirm.

We briefly explain the relevant facts. Beginning with the June 11, 1962, agreement, black Stonewall students were transferred from the Stonewall area to Enterprise. At the end of the 1967-68 school year, Quitman refused to pay Enterprise any transfer funds and denied the requests by Stonewall students to transfer to Enterprise. The Clarke County board overruled Quitman's denials of the transfer requests.

On April 12, 1973, Enterprise's lawyer sent a letter to the Quitman superintendent requesting payment of "certain funds" the Enterprise board considered due to Enterprise. On January 9, 1974, Quitman's superintendent indicated that the Quitman school board had reviewed

Enterprise's letter and had taken no action.[40] Enterprise again requested funds on April 10, 1973, September 11, 1973, November 25, 1975, March 8, 1977, June 4, 1987, February 18, 1988, and October 26, 1988.

Beginning in December 1988, the magistrate judge signed a series of orders staying the collection of transfer funds and preserving all claims to funds. The entry of these orders did not relieve the parties of their obligations and liabilities under the applicable Mississippi Code provisions.

No law allows Enterprise to recover during the applicable time period. Enterprise cannot recover funds under the June 11, 1962, agreement because, as Enterprise admits in its brief, the agreement is void as unconstitutional. The magistrate judge held that during 1968-69 to 1986-87, no Mississippi statute provided for the interdistrict payment of funds. A review of the applicable law during this period confirms the magistrate judge's conclusion.

In 1962, the Mississippi legislature enacted a statute allowing the transfer of individual students from one school district to another by the mutual consent of the boards of trustees of all school districts concerned. 1962 Miss. Laws, ch. 357, § 1, codified at MISS.CODE ANN. § 6248-07 (effective May 10, 1962). The section provided

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[40] On December 14, 1973, the Enterprise superintendent stated to the Quitman superintendent that Enterprise considered the June 11, 1962, contract to be valid, except as to the reference to the race of the students. At some time, Enterprise had submitted a race-neutral contract to Quitman for approval, but Quitman never approved it.

that certain state funding would follow a transferred student:

> Legally transferred students going from one school district to another shall be counted for teacher allotment and allotments for other current costs by the school district wherein the pupils attend school, but shall be counted for transportation allotment purposes in the school district which furnishes or provides the transportation.

Id. The statute made no provision for payments between districts. In 1972, the legislature transferred part of the 1962 provisions to a newly-created § 37-19-33 (later renumbered § 37-19-27), entitled "Counting of legally transferred students." Section 37-19-33 contained the same language in the 1962 law quoted above, except that if there was a transfer from one county to another, the county of residence would pay the county at which a child attended school a fee equal to the average cost of educating a child in the county of residence multiplied by the number of students transferred.[41] in 1978, § 37-19-33 was renumbered as § 37-19-27.

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[41] Section 37-19-33 provided in full:

> Students going from one school district to another, other than a municipal separate school district . . . shall be counted for teacher allotment and allotments for other current costs by the school district wherein the pupils attend school, including maintenance costs; but shall be counted for transportation allotment purposes in the school district which furnishes or provides the transportation. When such transfer shall be from one county to another, the county superintendent of education of the county from which said students are transferred shall, within

The 1962 statute does not speak to the allocation of payments. Only in 1987 was § 37-19-27 amended to provide for payments. Therefore, the magistrate judge was correct in concluding that no Mississippi law required Quitman to pay Enterprise for the Stonewall transfer students.

Enterprise argues that it is entitled to recover funds under a theory of quantum meruit. Quitman has consistently refused to pay money since 1968, and it repudiated the entire agreement in 1977. Under these circumstances, Enterprise did not have a reasonable expectation of compensation, and therefore it should not recover on a theory of quantum meruit.

The magistrate judge held that Enterprise is equatable estopped from asserting claims to funds due for the years 1968-69 to 1986-87. The magistrate judge found that Quitman stopped paying transfer funds in 1968, that Enterprise made its first demand for payment in 1973, that Enterprise made its second demand in 1987, and that during the intervening fourteen years, Enterprise never

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> thirty days after a request in writing to do so by the county superintendent of education of the other county, issue his warrant in an amount equal to the total number of pupils attending the school from such county multiplied by the average expenditure per pupil in the county from which the pupils are transferred, on the maintenance fund to pay any sums due hereunder to the said school district wherein the said students are attending. His failure to do so renders him liable therefore in the amount thereof of his official bond.

MISS.CODE. ANN § 37-19-33 (1972). Also in 1972, the legislature enacted § 37-15-31.

initiated suit on the debt it alleged to be due from Quitman.

Enterprise argues that the magistrate judge erred in finding that Enterprise made no demands upon Quitman from 1973 to 1987. It appears that the magistrate judge failed to note that Enterprise made additional demands on April 10, 1973, for the 1968-69, 1969-70, and 1971-72 academic years; on September 11, 1973, for the 1972-73 academic year; on November 25, 1975, for the 1973-74 and 1974-75 academic years; and on March 8, 1977, for the 1975-76 academic year.

We need not reach the issue of whether the magistrate judge made an erroneous factual finding, or whether any such error disturbs his conclusion regarding equitable estoppel. We have held that Enterprise cannot prevail on its substantive theories of recovery: contract, state education law, or quantum meruit. Because Enterprise's arguments are meritless, it does not matter whether Enterprise is equitably estopped from making the arguments.

B. 1987-88 and 1988-89 Academic Years.

The magistrate judge held that Enterprise should recover from Quitman for the years 1987-88 and 1988-89 under MISS.CODE ANN. § 37-19-27, which required the payment of funds for students transferred between districts in the same county. The magistrate judge found the amounts to be paid were $81,022.00 for 1987-88 and $124,574.91 for 1988-89. Quitman challenges the award, arguing that the Clarke County board did not consider on

an individual basis the appeals of Quitman's denials of transfer requests, and that therefore the transfers from Stonewall to Enterprise were illegal.

In 1987-88 and 1988-89, Quitman refused requests for transfer by Stonewall students who made a joint appeal for transfer to the Clarke County Board. The joint appeal did not contain any explanation for the transfer of any individual student.

The statute governing transfer payments during the 1987-88 and 1988-89 academic years was MISS.CODE ANN. § 37-19-27. In 1987, the Mississippi legislature expanded the coverage of § 37-19-27 from intercounty transfers to interdistrict transfers. 1986 Miss.Laws 1986, ch. 492 § 104 (effective July 1, 1987). Also § 37-19-27 was amended to require payments to be made only for "legally transferred" students. The transfers from Stonewall to Enterprise were interdistrict transfers. Therefore, § 37-19-27 applies. Under § 37-19-27, Quitman is liable for payments only if the transfers were valid.

To determine whether the Stonewall students were legally transferred, we turn to § 37-15-31, which sets out the procedure for interdistrict transfers. Section 37-15-31 provided that if either the transferring or the receiving school board refuses a student's request for transfer,

> then an appeal may be had to [the] county board of education. The said county board of education to which said appeal is taken shall act thereon not later than the date of its next regular meeting subsequent to the disapproval or failure to act by the school board by the school board [sic] of said school district, or not later than the

> date of its next regular meeting subsequent to the filing of such appeal.

MISS.CODE ANN. 37-15-31. Section 37-15-31 did not require the county school board to consider of [sic] transfers "on an individual basis." We therefore conclude that the actions of the Clarke County board, and the subsequent transfer of the Stonewall students, were legal.

Quitman argues that the Stonewall transfers violated Section 37-15-15. Section 37-15-15, which governs *intra-district* assignments, requires school boards to assign students *within* a particular district "on an individual basis." It reads in full:

> In making assignments of children to school or attendance centers, the school board shall take into consideration the educational needs and welfare of the child involved, the welfare and best interest of all the pupils attending the school or schools involved, the availability of school facilities, sanitary conditions and facilities at the school or schools involved, health and moral factors at the school or schools, and in the community involved, and all other factors which the school board may consider pertinent, relevant or material in their effect on the welfare and best interest of the school district and the particular school or schools involved. All such assignments shall be on an individual basis as to the particular child involved and, in making such assignment, the school board shall not be limited or circumscribed by the boundaries of any attendance areas which may have been established by such board.

MISS.CODE ANN. § 37-15-15. Section 37-15-15 is not applicable to interdistrict transfers. *See Hinze v. Winston County*

Bd. of Educ., 233 Miss. 867, 103 So.2d 353, 356 (1958) (holding that the predecessor to § 37-15-15 does not apply to interdistrict transfers).

C. 1989-90 Through 1991-92.

The magistrate judge held that Enterprise should not recover for 1989-90 or any subsequent school years because Enterprise and Quitman did not enter into a contract for the payment of transfer funds as required by state law. In 1989, section 37-19-27 was amended to require boards approving transfers to enter into contracts "for the payment or nonpayment of any portion of their local maintenance funds which they deem fair and equitable in support of any transferred students." Absent such a contract, no such payments can be made. The magistrate judge stated:

> [T]his Court is of the opinion that, after 1989, the applicable Mississippi Code provisions required the parties to memorialize their transfer agreements. This Court further finds that Enterprise and Quitman failed to comply with this code provision, and as a result neither party was obligated to pay transfer funds to the other for the years following 1989.

Enterprise urges us to reverse the magistrate judge with respect to years 1989-90 through 1991-92. Enterprise's only affirmative theory of relief for these years would be quantum meruit. As is discussed above, Enterprise did not have a reasonable expectation of payment and therefore is not entitled to recovery.

The magistrate judge required Quitman to make reasonable payments to Enterprise for court-ordered transfers in the school years 1992-93, 1993-94, and 1994-95. Quitman does not appeal this aspect of the district court's decision.

IX. Conclusion

We REVERSE the magistrate judge's order transferring students from Northeastern Clark County to Clarkdale and from Stonewall to Enterprise. We AFFIRM all other aspects of the judgment. We REMAND for further appropriate proceedings.[42]

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[42] In light of the resumption of school in the subject districts in the late summer of 1994, we direct that the mandate shall issue forthwith. *See* FED.R.APP.P. 41(a).

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

THE LAUDERDALE COUNTY SCHOOL DISTRICT, BY AND THROUGH ITS BOARD OF EDUCATION, JOHN L. KNIGHT, GLORIS COOPER, TOMMY S. GUNN, WANDA MCPHAIL, AND ARNOLD M. THREAT — PLAINTIFFS

VS. — CIVIL ACTION NO. E88-0059(L)

ENTERPRISE SCHOOL DISTRICT, BY AND THROUGH ITS BOARD OF TRUSTEES, ET AL — DEFENDANTS

Consolidated with

QUITMAN SCHOOL DISTRICT, BY AND THROUGH ITS BOARD OF TRUSTEES — PLAINTIFF

VS. — CIVIL ACTION NO. E88-0065(L)

ENTERPRISE SCHOOL DISTRICT, BY AND THROUGH ITS BOARD OF TRUSTEES, AND THE CLARKE COUNTY BOARD OF EDUCATION BY AND THROUGH ITS BOARD OF TRUSTEES — DEFENDANTS

OPINION

(Filed July 5, 1991)

The Plaintiffs, Lauderdale County School District, by and through its Board of Education, John L. Knight, Gloris Cooper, Tommy S. Gunn, Wanda McPhail, and Arnold M. Threat (Lauderdale) bring this action against defendants Enterprise School District, by and through its Board

of Trustees (Enterprise) seeking to hold that certain students residing in Northeast Clarke County who attend Clarkdale Attendance Center (Clarkdale) are not transfer students but are students merely attending an attendance center which is partially owned and located in Clarke County. Because some Northeast Clarke County students are attending and have attended Clarkdale, the issue of how much money is owed in attendant funds to Lauderdale by Enterprise for educating those students is intertwined with the transfer issue.[1]

This matter is consolidated with Quitman School District, by and through its Board of Trustees (Quitman) versus Enterprise School District, by and through its Board of Trustees (Enterprise), and the Clarke County School Board of Education by and through its Board of Trustees (Clarke County Board of Education). Quitman seeks to declare that the Stonewall Territory of Clarke County, Mississippi is properly annexed to Quitman School District. Because some Stonewall students are presently and have in the past attended Enterprise, the issue of how much money is owed to Enterprise by Quitman, if any, for educating those Stonewall students is intertwined with the territorial issue.

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[1] Reference is made to attendant funds pursuant to Miss. Code Ann. § 37-19-27 (1972). Attendant funds are those public funds designated for the educational support of students within a school district. When students remain in and are educated by a particular school district, then public funds attributable to the educational support of such students remain within that school district. When a student attends a school outside his/her school district, the attendant funds are to follow the student provided the student is legally attending that school district.

The Court has granted Certain Concerned Citizens of Northeast Clarke County (Concerned Citizens) limited participation, as amicus curiae, in asserting their interest in seeking a fair and just resolution to these complex issues. The Court has bifurcated and reserved ruling on the monetary issues in both cases. The Court's order bifurcating the monetary issues also ordered all parties to conduct statistical compilation of all students residing in the respective school districts. During the course of these proceedings it became apparent that numerous inaccuracies existed regarding the addresses of students attending the various schools. The Court also became aware of some students residing in Jackson County, Mississippi and even in the state of Alabama being allowed to transfer to the Enterprise School. Accordingly, prior to the 1990-91 school year, the Court directed all parties to prepare a statistical compilation of all affected students residing in the respective school districts and requiring accurate address information regarding all transfers.[2]

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[2] The substance of that order stated:

That interdistrict transfer applications of students shall continue to be stayed until further order or until final determination by this Court;

That the claims of the parties, if any, for attendant funds shall be reserved and preserved for final determination by this Court;

That any application for a transfer must contain the correct home address describing the actual site of residency and race of the student requesting a transfer; and

For these purposes, a post office box number or route number without further description shall not be considered a sufficient address; and

It is ordered that no transfer may be approved or disapproved by the Enterprise School Board, the Lauderdale County

Based upon the record in these cases, including the testimony of all witnesses, depositions, and exhibits

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School Board, the Quitman School Board, or the Clarke County Board of Education unless and until the Board considering the application be provided with as accurate as possible information as to race and address of the subject student; and

It is ordered that should any Board learn that an address it has been provided is inaccurate, it must deny such application and must advise any other Board which may consider the application of such inaccuracy after which that Board must also deny the same; and

The Board shall make every effort to insure accurate information as to residency is given by students requesting transfer and should any Board learn it has been provided inaccurate information at any time after an application has been granted, then approval of such application shall be rescinded and the student shall be excluded from the school and be required to attend school in the district of his or her residence; and

The Enterprise and Lauderdale County Boards are further required to compile, as accurately as possible, data stating the place of residence and race of each student attending Enterprise and Clarkdale Schools; and

The Quitman Board is required to compile the same data concerning students attending Quitman schools from the "Stonewall Attendance Area"; and

The Boards shall not enroll any student who resides outside its school district without a valid transfer and, should the Board learn of any student attending without a valid transfer, that student shall immediately be removed from the school and be required to attend the school in the district in which he or she resides; and

The Enterprise, Lauderdale, and Quitman School Boards are each directed and ordered to re-examine the requirements of the segregation Orders of 1969 and apply those requirements to the application for transfer and enrollment of students in each district's particular schools and, in due haste, make the necessary adjustments and corrections prior to the 1990-1991 school year.

introduced into evidence, this Court makes the following findings of fact and conclusions of law.

I. The Stonewall Territory

A. Facts and Procedural History

In 1956, pursuant to Chapter 12, General Laws of Mississippi, 1953 Extraordinary Session, the schools of Clarke County, Mississippi, were reorganized into two (2) separate consolidated districts. The northern third of Clarke County, Mississippi formed a school district called Clarke County Consolidated School District (now the Enterprise School District). This school district included the Stonewall Attendance Area. The southern two-thirds of Clarke County, Mississippi formed a school district called the Quitman Consolidated School District (now the Quitman School District). Promulgated by state statute, Clarke County, Mississippi has a county school board called the Clarke County Board of Education.

In March, 1961, the Enterprise Board of Trustees approved the closing of Stonewall High School and converting the existing Stonewall school to an elementary school for grades one (1) through six (6). Stonewall students in grades seven (7) through twelve (12) would be required to attend other Enterprise schools.

Upon learning of the Enterprise Board of Trustees' intent to close Stonewall High School, parents and concerned community members of Stonewall filed a petition requesting the detachment of the Stonewall area from Enterprise and annexation to Quitman. Part of the petition states:

> . . . the annexation of the aforedescribed territory [Stonewall] to the Quitman Consolidated School District would not seriously impair the efficiency or seriously interfere with the operation of the Clarke County Consolidated School District. [And] . . . it is to the best interest of the Clarke County Consolidated School District that the aforedescribed territory [Stonewall] be detached from the Clarke County Consolidated School District and annexed to Quitman Consolidated School District.

The petition contained a total of 639 qualified electors of the Stonewall area.

On March 12, 1962, the Board of Trustees of Quitman unanimously passed a resolution accepting the annexation of the Stonewall area, which would "become effective when approved as required by law, on July 1, 1962."

On March 13, 1962, over objection by certain citizens of the Stonewall area, the Enterprise Board of Trustees adopted a long range plan providing for the closure of Stonewall High School. The next day, Enterprise met with the Clarke County Board of Education concerning the long range plan and the annexation of the Stonewall territory to Quitman. At this meeting the Clarke County Board of Education tabled Enterprise's Long Range Plan and adopted a resolution detaching the Stonewall territory from Enterprise and annexing it to Quitman.

On March 23, 1962, Enterprise appealed the Clarke County Board of Education's annexation decision to the

Circuit Court of Clarke County, Mississippi. *See, Griffin, et al v. Clarke County Board of Education,* Cause No. 6176.

On March 30, 1962, citizens of the Stonewall area filed an injunction against Enterprise in Chancery Court of Clarke County, Mississippi. *See, Green, et al v. Cooper,* Cause No. 6788. The Bill of Complaint alleges that Enterprise, in closing down Stonewall High School, acted "arbitrary, capricious and without regard to the general welfare, health and morals [sic] of the students of the students [sic] affected thereby. . . . " Moreover, Enterprise does not have the facilities to accept an additional 216 Stonewall students, representing grades six (6) through eleven (11), who will be required to attend Enterprise Attendance Center.

On April 2, 1962, Clarke County Board of Education adopted a resolution disapproving Enterprise's action in closing down Stonewall High School. The resolution specifically provided that Enterprise did not have sufficient existing facilities to properly and adequately teach students in grades seven (7) through twelve (12) absent the Stonewall High School.

On April 13, 1962, Clark County Board of Education filed and was granted leave to intervene in the *Green, et al v. Cooper, et al,* Cause No. 6788 suit to enjoin Enterprise from closing Stonewall High School.

On May 1, 1962, Enterprise filed a Petition for Certiorari against Clarke County Board of Education seeking to set aside the Board's resolution of April 2, 1962, disapproving Enterprise in closing down Stonewall High School. *See, Williams, et al v. Riley, et al,* Cause No. 6182.

Subsequent to these suits being filed, both Enterprise and Quitman entered into extensive negotiations in an attempt to resolve the problems surrounding the Stonewall territory. On May 15, 1962, the Board of Trustees for Enterprise and Quitman and the Clarke County Superintendent of Education, the Superintendent of Quitman School District, a member of the State Educational Finance Commission, the Executive Secretary of the State Educational Finance Commission, four members of the Clarke County Board of Education and two citizens of the Stonewall territory met and discussed at length the annexation of Stonewall and other proposals for the continued education of the students living in the Stonewall area.

After extensive negotiations, Enterprise and Quitman entered into a written compromise which in pertinent part provides:

(1) The Stonewall territory is to be detached from Enterprise and annexed to Quitman;

(2) All Negro pupils residing in the Stonewall area are to be transferred to Clarke County High School Attendance Center, an all Negro high school located in Enterprise school district;

(3) All state funds shall be paid to the school district where the student attends school;

(4) This agreement will be effective upon approval by the Clarke County Board of Education and the State Education Finance Commission of the State of Mississippi;

(5) The *Griffin, et al v. Clarke County Board of Education,* Cause No. 6176 (annexation appeal case); *Green, et al v. Cooper, et al,* Cause No. 6788

(Stonewall injunction case); and *Williams, et al v. Riley, et al,* Cause No. 6182 (Enterprise's Petition for Certiorari) will be dismissed; and

(6) This agreement shall continue for a period of 25 years.

On June 11, 1962, the Board of Trustees for Enterprise and Quitman approved the above mentioned written agreement. On June 12, 1962, the Clarke County Board of Education approved the written agreement. On June 18, 1962, the Educational Finance Commission approved the annexation of the Stonewall territory and the contractual agreement.

Approximately three years later, on May 21, 1965, suit was filed in United States District Court against Enterprise, Quitman and the Clarke County Board of Education seeking to dismantle the racially discriminatory dual school system being operated in Clarke County, Mississippi. *See, Killingsworth v. Enterprise Consolidated School District, et al,* Cause No. 1302(E).

Quitman and Enterprise, pursuant to the preliminary orders entered in the *Killingsworth* case, submitted in 1965 desegregation plans that incorporated a grade by grade "freedom of choice" concept, which plans were tentatively accepted on August 5, 1965 and revised on September 22, 1966.

Through discovery, *Killingsworth* Plaintiffs were made aware of the June 11, 1962 contract between Enterprise and Quitman allowing for Negro interdistrict transfers to the all black high school in Enterprise School District. Consequently, on June 14, 1967, plaintiffs filed for supplemental relief requesting the District Court to

declare *inter alia*, the contract of June 11, 1962 between Enterprise and Quitman unconstitutional.

On July 19, 1967, the District Court entered a final order finding that the previously approved desegregation plans, the "freedom of choice" plans, failed to meet the standards for desegregation. For purposes of this case the Court specifically:

> (1) Enjoined Enterprise, Quitman and the Clarke County Board of Education from discriminating on the basis of race or color;
>
> (2) Held that Enterprise, Quitman and the Clarke County Board of Education shall take affirmative "action to disestablish all school segregation and to eliminate the effects of the dual school system.";
>
> (3) Allowed all students irrespective of race or color to exercise his/her choice of which school to attend in their respective school districts;
>
> (4) Held that this exercise of choice will be available for each student annually;
>
> (5) Held that overcrowding of the particular school chosen will be the only reason for denying the student's choice of which school to attend; and
>
> (6) Held that there will be no interdistrict transfer between Enterprise and Quitman "except on terms and by procedures generally applicable regardless of race."

It is important to note that the District Court did not find the contract of June 11, 1962, between Enterprise and Quitman, annexing the Stonewall territory to Quitman, unconstitutional. Indeed, the Board of Trustees of

Quitman, on August 1, 1967, adopted a resolution recognizing the June 11, 1962, contract as being still in force as a legal and binding instrument.

On July 3, 1969, the Fifth Circuit Court of Appeals reversed and remanded the *Killingsworth* case to the District Court requiring desegregation plans to be filed by August 27, 1969. The Fifth Circuit further ordered that if no plan was submitted by the respective school districts, the Department of Housing, Education and Welfare (HEW) could file a desegregation proposal on August 11, 1969, and the parties could object thereto. On August 11, 1969, HEW filed separate desegregation plans for Enterprise and Quitman school districts. Enterprise objected to the desegregation plan by filing a motion to strike and to stay action on the plan.

The HEW plans for both Enterprise and Quitman called for immediate desegregation of all schools including teachers and staff members. Additionally, the plans provided intradistrict transfers only when the race of the student seeking transfer is a minority in the transferee school. The plans permitted interdistrict transfers only "on a non-discriminatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district or reinforce the dual school system." On November 7, 1969, the Fifth Circuit ruled that the desegregation plans filed by HEW would be implemented immediately.

For each and every school year after 1968-69 some students residing in the Stonewall area have filed petitions requesting transfers from Quitman to Enterprise. The procedure has been:

(1) Quitman for each school year after 1968-69 has consistently denied such requests for transfer by Stonewall students to attend school in the Enterprise School District.

(2) Such Stonewall students, upon being denied approval of their transfer requests by Quitman, have appealed to the Clarke County Board of Education to overrule the action of Quitman in denying such requests for transfer;[3] and

(3) In each and every case after 1968-69 the Clarke County Board of Education has overruled Quitman and approved the requests for transfers.

The Mississippi Legislature is phasing out county-wide Boards of Education throughout the entire state of

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[3] The avenue for appeal to the Clarke County Board of Education is provided under Miss. Code Ann. § 37-15-31 (1972) which in pertinent part states:

. . .

(1) (a) . . . a parent or guardian . . . of an individual student [may] . . . petition the school board of a school district as to the transfer in one school district . . . to another school district, by mutual consent of the school boards of all school districts concerned. . . .

. . .

(b) . . . If such a transfer should be refused by the school board of either district, then an appeal may be had to such county board of education. The said county board of education to which said appeal is taken shall act thereon not later than the date of its regular meeting subsequent to the disapproval or failure to act by the school board of said school district, or not later than the date of its next regular meeting subsequent the filing of such appeal.

Mississippi, commencing January 1, 1992.[4] Consequently, the appeal process by which some Stonewall students are attending Enterprise will be eliminated next year.

B. Discussion.

Since June 18, 1962, when the State Educational Finance Commission approved the annexation of the Stonewall territory to Quitman, the Clarke County Board of Education has operated on the assumption that the territory was a part of Quitman. Further, Quitman has assumed that the Stonewall area was a part of its school district. For over 26 years, from June 1962 until June 17, 1988, when suit was filed, there was nothing to indicate that the Stonewall area was not lawfully annexed to Quitman. During this period Quitman budgeted, funded, maintained schools and hired teachers as if Stonewall was a part of the Quitman District without a formal

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[4] Miss. Code Ann. § 37-6-3 (1972) provides:

> . . . (4)(a) As used in this chapter, the term "administrative superintendent" shall mean those countywide school superintendents who do not supervise any instructional facility or students and whose duties are prescribed in Section 37-9-16, Mississippi Code of 1972.
>
> (b) This subsection shall stand repealed from and after January 1, 1992, and after such date all references to the "administrative superintendent" in this chapter shall be construed to mean the "superintendent" or "superintendent of schools" as defined in subsection (3) of this section.

Miss. Code Ann. § 37-9-16 (1990) sets forth the duties of the County school boards. Like the previous section just discussed, § 37-9-16 will be repealed as of January 1, 1992.

complaint by Enterprise indicating that the Stonewall territory was unlawfully annexed. Further, students attended Quitman school from the Stonewall area, without objection by Enterprise, believing they were a part of the Quitman School District. Indeed, students from that area had to obtain transfers from the Clarke County Board of Education in order to attend the Enterprise School.

As early as December 3, 1968, during the peak of the *Killingsworth* litigation, Enterprise presented to the Court, in a hearing before U. S. District Judges Nixon, Cox and Russell, a map representing Enterprise School District which did not contain the Stonewall territory. It was during this hearing that the Superintendent of Enterprise testified as follows:

> Q. We've indicated on the map introduced into evidence by stipulation known as the Stonewall area, when was that area detached from the Enterprise School District and made a part of the Quitman district?
>
> A. I believe this was in 1962.

Additionally, during objection to its HEW desegregation plan Enterprise stated:

> The foregoing facts demonstrate beyond doubt that [Enterprise] is dependent for its financial solvency, the quality of its educational program and its very existence upon pupils who reside outside of [Enterprise] but who have elected to attend the schools administered by [Enterprise].
>
> If and when Stonewall Elementary School is closed, the Enterprise Elementary School must

> be prepared to accommodate additional students from the *Stonewall Attendance Zone of the Quitman Consolidated School District, who will, without doubt, elect to attend school at Enterprise.* (Emphasis ours)

Enterprise contends that because the contract annexing the Stonewall territory to Quitman contained an unconstitutional condition, providing that all negro students residing in the Stonewall territory are to attend the all black schools in Enterprise, the entire contract is void. Consequently, it is asserted that the annexation of the Stonewall territory to Quitman is also void. Quitman, on the other hand, contends that Enterprise has waived its right in claiming any interest in the Stonewall territory or is estopped from claiming such interest. Quitman further contends that the Stonewall annexation issue was resolved in 1968 by the Court in *Killingsworth.*

The doctrine of equitable estoppel may exist based upon *words, conduct, silence,* or *delay. In Re Stoball's Will,* 50 So.2d 635, 639 (Miss. 1951). (Emphasis ours). Mississippi substantive law is replete with cases discussing the doctrine of equitable estoppel and estoppel by conduct.

In *PMZ Oil Company v. Lucroy,* 449 So.2d 201 (Miss. 1984), the Mississippi Supreme Court discussed at length the doctrine of equitable estoppel. The Court explained that the doctrine:

> has its roots in the morals and ethics of our society. *See Kelso v. Robinson,* 172 Miss. 828, 840, 161 So. 135, 137 (1935); *Stokes v. American Central Insurance Co.,* 211 Miss. 584, 589, 52 So.2d 358, 360 (1951). Fundamental notions of justice and

> fair dealings provide its undergirding. Whenever in equity and good conscience persons ought to behave ethically toward one another the seeds for a successful employment of equitable estoppel have been sown.

This moralistic and ethical connotation is deeply rooted in this doctrine:

> The doctrine [of estoppel] lies at the foundation of morals; it is based on equity and good conscience.

Martin v. Hartley, 43 So.2d 875 (Miss. 1950).

Adding teeth to this idea, the courts of this state have always, in proper cases, been prepared to:

> hold a person to a representation made or a *position assumed* where otherwise inequitable consequences would result to another who, having the right to do so under all of the circumstances of the case, has in good faith relied thereon and been misled to his injury. *Stokes v. American Central Insurance Co.*, supra, 211 Miss. at 589, 52 So.2d at 360.
>
> A party asserting equitable estoppel must show (1) that he has changed his position in reliance upon the *conduct of another,* and (2) that he has suffered detriment caused by his change of his position in reliance upon such conduct. *Birmingham v. Conger,* 222 So.2d 388, 392-393 (Miss. 1969); *Thomas v. Bailey,* 375 So.2d 1049, 1052 (Miss. 1979); *Ivy v. Grenada Bank,* 401 So.2d 1302, 1303 (Miss. 1981).
>
> . . .
>
> Our approach to equitable estoppel is consistent with that throughout the country. We find

wholly consistent with our law the articulation of the doctrine by the Supreme Judicial Court of Massachusetts in *McLearn v. Hill*, 276 Mass. 519, 177 N.E. 617, 77 A.L.R. 1039 (1931) as follows:

> In order to work an estoppel it must appear that one has been induced by the *conduct of another* to do something different from what otherwise would have been done, and which has resulted to his harm and that the other knew or had reasonable cause to know that such consequence might follow. But the doctrine of equitable estoppel is not applied except when to refuse it would be inequitable. The law does not regard estoppel with favor, nor extend them beyond the requirements of the transactions in which they originate. 276 Mass. at 524, 177 N.E. at 619.

PMZ Oil Company, 449 So.2d at 206 (emphasis added).

Otherwise stated:

> [t]he essential elements of an equitable estoppel are:
>
> Conduct and acts, language or silence, amounting to a representation or concealment of material facts, with knowledge or imputed knowledge of such facts, with the intent that representation or silence, or concealment be relied upon, with the other party's ignorance of the true facts, and reliance to his damage upon the representation or silence.

Chapman v. Chapman, 473 So.2d 467, 470 (Miss. 1985 (citing *Crow v. Fotiades*, 80 So.2d 478, 486, (Miss. 1955)); *see Harris v. American Motorist Insurance Company*, 126 So.2d 870, 875 (Miss. 1961) (virtually identical definition); *Stokes*

v. American Central Insurance Company, 52 So.2d 358, 360 (Miss. 1951) (same); *Izard v. Mikell*, 163 So. 498, 499 (Miss. 1935) (same); *Day v. McCandless*, 142 So. 486 (Miss. 1932) (same); *see also Mitchell v. Aetna Casualty and Surety Company*, 579 F.2d 342 (5th Cir. 1978); *Resolute Insurance Company v. State of Mississippi*, 290 So.2d 599, 602 (Miss. 1974).

As to the requisite intent, the Mississippi Supreme Court stated:

> Of importance here is whether, in order that it be subjected to an equitable estoppel, PMZ and its president Pinkston had in mind a fraudulent intent or scheme at the time of the negotiations and ultimately sale to the Lucroys. There is some loose talk in our opinions to the effect that such intent must have been present. *See Perrien v. Mapp*, 374 So.2d 794, 797 (Miss. 1979); *Perkins v. Kerby*, 308 So.2d 914, 917 (Miss. 1975); *Crowe v. Fotiades*, 224 Miss. 422, 80 So.2d 478, 486 (1955).
>
> The better view is that an equitable estoppel may be enforced in those cases in which it would be substantially unfair to allow a party to deny what he has previously induced another to believe and take action on. Our early case of *Staton v. Bryant*, 55 Miss. 261, 273 (Miss. 1877) suggests that one such as PMZ may not "change his attitude" to the substantial detriment of another and avoid an estoppel on grounds that at the outset his heart was pure. It is sufficient if the acts of the party sought to be estopped, although made without subjective intent to mislead, were, objectively speaking, calculated to mislead, and did mislead.
>
> Fraudulent intent to mislead or deceive where present may often, when relied upon,

produce inequity and hence an estoppel. This does not mean that no estoppel may be enforced absent such intent *ab initio.* For there are cases, of which this is one, where there has resulted substantial inequity produced by a change of attitude *sans* original subjective fraudulent intent. Substantial inequity is our touchstone. *Izard v. Mikell,* 173 Miss. 770, 774, 163 So. 498, 499 (1935).

We find appropriate what has been said on this point by the Supreme Court of New Jersey in *Howard v. West Jersey and Seashore Railroad Co.,* 102 N.J. Eq. 517, 131 A. 755 (1928), to-wit:

> . . . [I]t should be noted while the doctrine of estoppel in pais rests upon the ground of fraud, it is not essential that the representations or conduct giving rise to its application should be fraudulent in the strictly legal significance of that term, or with intent to mislead or deceive; the test appears to be whether in all the circumstances of the case conscience and duty of honest dealing should deny one the right to repudiate the consequences of his representations conduct; whether the author of a proximate cause may justly repudiate its natural and reasonably anticipated effect; fraud, in the sense of a court of equity, properly including all acts, omissions and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious another, or by which an undue and unconscientious advantage is taken of another.

102 N.J.Eq. at 521, 141 A. at 757; *Looney v. Trimount Theaters,* 282 Mass. 275, 184 N.E. 683, 685

(1933). *See Deposit Guaranty National Bank of Jackson v. Prudential Insurance Co. of America,* 195 So.2d 506, 511 (Miss. 1967).

PMZ Oil Company, 449 So.2d at 206-07.

The Court is ever mindful that the doctrine of equitable estoppel is to be applied cautiously and is not a sword but a shield. *Covington County v. Page,* 456 So.2d 739 (Miss. 1984). The doctrine is to be applied only when equity clearly requires it. *Busby v. Daws,* 592 F.2d 1241 (5th Cir. 1979); *Lancaster v. City of Columbus,* 333 F.Supp. 1012 (N.D.Miss. 1971); *Bright v. Michel,* 242 Miss. 738, 137 So.2d 155 (1962).

The Court is convinced that the doctrine of equitable estoppel should be invoked in this case to act as a shield prohibiting Enterprise from claiming any right to the Stonewall territory. Indeed, the fundamental notions of justice and fair dealings, which provide the undergirdings of this doctrine, lead us to this decision. The representations made by Enterprise during the litigation of *Killingsworth* and the conduct for 26 years after the *Killingsworth* decision creates the foundation for this Court to apply the doctrine of equitable estoppel. During the entire litigation of *Killingsworth,* Enterprise represented to the Court and to the litigants that the Stonewall territory was lawfully annexed to Quitman. During the December 3, 1968 hearing Enterprise submitted as evidence a map of Enterprise School District indicating that the Stonewall territory was a part of Quitman. At this same hearing, Enterprise's Superintendent testified, under oath, that the Stonewall territory was annexed to Quitman in 1962. Enterprise's objection to its HEW desegregation plan admits that the Stonewall territory was a

part of Quitman Consolidated School District. Based on these representations by Enterprise, it was only logical for Quitman to assume that Stonewall was a part of its school district. Indeed, the conduct of Enterprise clearly induced Quitman to form this belief. *See, PMZ Oil Company,* 449 So.2d at 206. Enterprise's silence for 26 years after the *Killingsworth* litigation rises to the level of a representation that the Stonewall territory is lawfully a part of Quitman. *Harris,* 126 So.2d at 875; *Chapman,* 473 So.2d at 470; *Stokes,* 52 So.2d at 360. It is this Court's opinion that Quitman has sufficiently relied on and suffered detriment as a result of Enterprise's representations during the *Killingsworth* litigation and the conduct of Enterprise for 26 years after the *Killingsworth* decision. Quitman has planned, budgeted, forecasted, funded, hired teachers and staff members, paid taxes, and maintained school property since June 11, 1962, under the assumption that the Stonewall territory was properly annexed. Such conduct on the part of Quitman, both before and after the *Killingsworth* decision, provides, in this Court's opinion, sufficient detrimental reliance on Enterprise's representations and conduct to invoke the doctrine of equitable estoppel. *See, Birmingham,* 222 So.2d at 392-3; *Thomas,* 375 So.2d at 1052.

Secondly, this Court finds that the issue regarding the Stonewall territory was properly brought before the three judge panel of the United States District and the Fifth Circuit Court of Appeals in the *Killingsworth* case. The plaintiffs, in *Killingsworth,* supplemented their complaint on June 14, 1967, requesting the Court to declare the contract of June 11, 1962, annexing Stonewall to Quitman unconstitutional. Moreover, on December 3, 1968,

during a hearing before Judges Cox, Nixon and Russell in the *Killingsworth* case, the following occurred:

BY JUDGE RUSSELL:

I'm not talking about a new lawsuit, I'm talking about a continuation of the old one in that light.

BY MR. ANDERSON:

The position that I'm taking, Your Honor, is that we have simply filed another motion in this lawsuit.

BY JUDGE RUSSELL:

For Additional relief.

BY MR. ANDERSON:

Correct, Your Honor.

The District Court could have declared the contract unconstitutional but did not. Of all the relief requested by the *Killingsworth* plaintiffs, the Court only enjoined the two school districts from discriminating on the basis of race or color and directed affirmative action to disestablish and eliminate a dual school system. Accordingly, the Court finds that the annexation issue over the Stonewall territory was decided by the Court in *Killingsworth*. This Court will not sit with the aid of hindsight and circumvent what has already been decided by the *Killingsworth* court twenty-six years ago.

Although we have decided that the Stonewall territory was legally annexed to Quitman and Enterprise is estopped from claiming otherwise, we do not intend for this decision to sound the beginning of the Enterprise School District's demise. In order to maintain the integrity of the *Killingsworth* decision and its mandates, the

very existence of the Enterprise School District is essential. This District Court, the Fifth Circuit and the HEW desegregation plans all assumed the continued existence of Enterprise School District. We will not change or alter this assumption. In short, this decision regarding the annexation of the Stonewall territory will not be allowed to result in destruction of the Enterprise School District.

In order to maintain the *Killingsworth* directives, and to ensure the continued existence of Enterprise, a certain percentage of students residing in the Stonewall territory must be allowed to transfer to the Enterprise School District. This Court finds that to hold otherwise would violate the dictates of *Killingsworth*. The *Killingsworth* court was clearly aware of the transfers when it approved plans for both school districts. The method and procedure by which certain Stonewall area students will be allowed to attend Enterprise can only be decided after the Court, with the help of the parties and possibly outside expert personnel, has conducted a careful and thorough study of various alternatives. The implementation of this order will be an ongoing process worked out between both school districts and the Court.

In order to begin implementation of the finding, the Court directs both Enterprise and Quitman to comply completely and totally with their own respective HEW desegregation plans. This will require at a minimum that only Clarke County students be allowed to attend school in either Enterprise or Quitman school districts. The only exception to this rule will be the granting of transfers specifically allowed by both Enterprise and Quitman's desegregation plans. Specifically, this means that there will be no Alabama residents attending either Enterprise

or Quitman schools commencing on the 1991-1992 school year. Neither will students residing in Jasper County or any other county be permitted to attend Enterprise or Quitman unless they are deemed transfers as outlined in the respective desegregation plan. The Court further directs both Enterprise and Quitman to update the identification, sex and race of all students planning to attend each respective school district in the upcoming 1991-92 school year so the Court can make a determination of how many Stonewall students shall be allowed to transfer to Enterprise.

The Court will reserve ruling on the issue of how much, if any, Quitman owes Enterprise for educating those Stonewall students who have attended, or are attending, Enterprise School District until a hearing can be held on this issue.

II. The Transfer Issue.

A. Facts and Procedural History.

Prior to 1953, Clarkdale was operated by a consolidated line school district embracing territory in both Clarke and Lauderdale Counties. This school district was called the Clarkdale Line Consolidated School District. Pursuant to the provisions of Chapter 12, General Laws of Mississippi, 1953 Extraordinary Session, the public schools of Lauderdale County, with the exception of the Meridian Separate School District, were reorganized into the Lauderdale County School District.

The Clarkdale Attendance Center is physically located on the county line between Lauderdale and

Clarke Counties, Mississippi. The buildings, improvements, and school campus are physically located in both counties. Although Clarkdale is administered by the Lauderdale County School District as one of six attendance centers, it is jointly owned by both Enterprise and Lauderdale School Districts. The actual Attendance Center is jointly owned by both Enterprise and Lauderdale School Districts proportionately, according to the amounts contributed by each of said school districts. Enterprise School District does not participate in the operation or administration of Clarkdale.

In February 1962, Lauderdale and Enterprise School Districts entered into a written agreement concerning Clarkdale. Pertinent provisions of this agreement provide:

> (1) the two school districts shall join, unite and cooperate in the construction, erection, repairing, renovating, equipping and maintaining of the buildings and related school facilities at the Clarkdale Attendance Center for the education of such or so many of the white school children of each of said school districts as is hereinafter provided, and to operate and maintain the said school and related school facilities as provided for by Chapter 266 General Laws of Mississippi, 1956 Regular Session, as amended, and other applicable statutes;
>
> (2) Lauderdale County School District shall operate, manage, govern, supervise and control the buildings and related school facilities;
>
> (3) Ownership of the land, buildings, equipment and related school facilities shall be jointly by Lauderdale County Board of Education and

the Board of Trustees of Enterprise School District;

(4) Clarke County residents residing in the northeast section of Clarke County shall be eligible to attend Clarkdale;

(5) Clarkdale shall be constructed, erected, repaired, renovated, equipped, operated and maintained as a white attendance center for grades one (1) through twelve (12);

(6) Lauderdale County residents residing in the Meehan area shall be transferred to Enterprise School District; and

(7) This agreement shall last for twenty-five (25) years unless terminated by mutual agreement of all parties.

Students living in "Northeast Clarke County" have consistently attended Clarkdale since long before 1953. Students living in the Meehan area have consistently attended school in Enterprise since 1962.

In August 1965, the Department of Housing, Education and Welfare (HEW) approved a desegregation plan for Lauderdale School District which called for a "freedom of choice" plan. In August, 1966, a complaint was filed against Lauderdale alleging that the August 1965, desegregation, the "freedom of choice" plan, was not eradicating the dual school system of Lauderdale County School District. *See, USA v. Lauderdale County,* Cause No. 1367.

On September 27, 1966, the District Court found that the 1965 plan did not meet the desegregation requirements of *Singleton v. Jackson Municipal Separate School*

District, 355 F.2d 865 (5th Cir. 1966), and directed Lauderdale to enter a new plan by October 7, 1966. At the same time the District Court enjoined Lauderdale from "requiring segregation of the races in any school under their supervision. . . . "

On March 10, 1967, the District Court approved the plan filed on October 7, 1966. On June 26, 1967, the District Court modified the October 1966 plan and:

> (1) Permanently enjoined Lauderdale from discriminating on the basis of race or color;
>
> (2) Required Lauderdale to take affirmative action to disestablish all school segregation and to eliminate the effects of the dual school system;
>
> (3) Allowed all students, irrespective of race or color, to exercise his/her choice of which school to attend;
>
> (4) Held that this exercise of choice will be available for each student annually; and
>
> (5) Held that overcrowding of the particular school chosen will be the only reason for denying the student's choice of which school to attend.

On July 5, 1968, the United States of America (USA) filed a motion for Supplemental Relief against Lauderdale, asking the Court to modify its prior desegregation orders because the desegregation was not dismantling Lauderdale's dual school system.

On August 19, 1968, *USA v. Lauderdale County School District*, Cause No. 1367, was consolidated with other school desegregation cases being litigated in Mississippi

for hearings on the motions for supplemental reliefOn [sic] May 13, 1969, the District Court denied USA's motion for supplemental relief against Lauderdale, except as to facility, and an appeal was thereafter taken.

On July 3, 1969, the Fifth Circuit Court of Appeals remanded the cases back to the District Court, requiring desegregation plans to be filed for each school district by August 27, 1969. In its opinion, the Fifth Circuit allowed parties to present additional facts by way of affidavit and short briefs to the Court. If no plans were submitted by the schools, HEW could file proposed desegregation plans by August 11, 1969, with parties objecting thereto within ten (10) days.

The HEW plan for Clarkdale called for immediate desegregation including staff members and teachers. The original plan was modified on November 19, 1969, requiring Clarkdale to function as an attendance center with grades one (1) through twelve (12) for all students residing in the zone surrounding Clarkdale school. The desegregation plan permitted interdistrict transfers only on a "non-discriminatory" basis, except that there shall be no transfers where the cumulative effect will reduce desegregation in either school district or would reinforce a dual school system. The desegregation plan, as modified, required Clarkdale to have a 74:26 white to black student body ratio.

It is important to note that during the litigation of *USA vs. Lauderdale County School District*, Cause No. 1367, the defendants submitted answers to interrogatories indicating the total number of students residing in Clarke County who attend school at Clarkdale, and the total

number of students attending Enterprise who reside in the Meehan area of Lauderdale County. During the *Killingsworth* litigation, Enterprise, at the December 3, 1968, hearing, represented to the Court and submitted a map showing the students residing in Northeast Clarke County attending Clarkdale. Moreover, at this hearing Enterprise stipulated that Enterprise Consolidated School District is divided into two (2) attendance areas – Enterprise and Clarkdale. Lastly, Enterprise submitted, as an exhibit to its objection to the HEW desegregation plan, a statistical compilation showing those students residing in Northeast Clarke County and attending Clarkdale.

A desegregation plan was also filed for Enterprise by HEW on August 11, 1969. The details of this plan have already been discussed during the Stonewall issue of this opinion, *supra*. It is important to note for purposes of the transfer issue that the HEW desegregation plan for Enterprise makes no reference to the students attending Clarkdale and who reside in Northeast Clark County. Both Lauderdale County School District and Enterprise School District objected to the respective HEW desegregation plans.

On August 28, 1969, the Fifth Circuit Court of Appeals affirmed the granting of an extension of time for filing of terminal desegregation plans. An appeal was taken to the United States Supreme Court. On October 31, 1969, the U. S. Supreme Court reversed the Fifth Circuit and remanded the cases directing the School Districts to accept the desegregation plans submitted by HEW. *See, Alexander v. Holmes County Board of Education*, 396 U.S. 19, *reh. denied*, 396 U.S. 976 (1969).

During the 25 year contract period, most Northeast Clarke County students have attended the Clarkdale school. The contract period expired after the 1986-87 school year. From the school year 1987-88 to present most students living in Northeast Clarke County have petitioned Enterprise School District for approval to attend Clarkdale. All petitions have been denied by Enterprise. The students have then appealed Enterprise's denial to the Clarke County Board of Education in accord with Mississippi statute. *See* note 3, *supra*. The Clarke County Board of Education has granted all transfer requests accepted by the Lauderdale County School District. In 1989, Clarkdale had a total enrollment of 985 students, approximately 309 of whom were from Northeast Clarke County.

B. Discussion.

The initial issue to be decided by this Court at this time is whether students attending Clarkdale who reside in the Northeast area of Clarke County, Mississippi are transfer students and thus subject to the statutory requirements.

The written contract entered into between Enterprise and Lauderdale allowing for the Northeast Clarke County students to attend Clarkdale expired beginning the school year 1987-88. At the expiration of this contract, Northeast Clarke County students continued attending Clarkdale as legal transfer students pursuant to Mississippi statute. The Northeast Clarke County students are presently attending Clarkdale based on this statute. Because the contract expired at the end of the 1987 school

year and the Mississippi legislature is phasing out county school boards by 1992, students residing in this area will be subject to the denial of transfer by the Enterprise School District after this year.

After careful consideration of the testimony of witnesses and considering all of the evidence, the Court finds that the students residing in Northeast Clarke County who attend Clarkdale should be classified as transfer students. This decision is based on Miss. Code Ann. § 37-15-29 (1972), which requires students to attend school in the school district of their residence. This statutory provision provides in part:

> (1) Except as provided in subsections (2) and (3) of this section, no minor child may enroll in or attend any school except in the school district of his residence, unless such child be lawfully transferred from the school district of his residence to a school in another school district in accord with the statutes of this state now in effect or which may be hereafter enacted.[5]

Miss. Code Ann. § 37-15-29 (1972)

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[5] Subsection two (2) of Miss. Code Ann. § 37-15-29 permits students to attend a school outside their residence if the legal guardian of the student is an instructional personnel or certified employee of that school district. Subsection three (3) of Miss. Code Ann. § 37-15-29 permits students to attend a school outside their school district if the school outside their district is within thirty (30) miles of a school within the school district of the student's residence. ~~However, this subsection has been repealed by the Mississippi legislature effective July 1, 1991.~~ [CL/Stricken per Ord dtd 8-21-91.]

Additionally, the provisions of Chapter 12, General Laws of Mississippi, 1953 Extraordinary Session, reorganized Clarke County, Mississippi. This reorganization changed Northeast Clarke County from being within Clarkdale School District to falling within Enterprise School District. Consequently, since 1953, the students residing in Northeast Clarke County are a part of Enterprise School District. Based on § 37-15-29, and beginning July 1, 1991, absent a legal guardian being an employee of Clarkdale, the only way for the Northeast Clarke County students to attend Clarkdale is by way of transfer.

At the expiration of the twenty-five year contract, Northeast Clarke County students, beginning in the 1987-88 school year to the present, began petitioning Enterprise for transfer to attend Clarkdale. In each respective school year Enterprise denied those petitions for transfer. The mere fact that the Northeast Clarke County students petitioned Enterprise for transfer supports this Court's decision to hold that these students are indeed transferees. A particular attendance center cannot exist in a vacuum with no school board having authority over transfers. Enterprise School District clearly is the governing body which should regulate transfers of all students residing within its school district. Consequently, the Court finds that the Northeast Clarke County students attending Clarkdale are transfer students.

Although we have decided that the Northeast Clarke County students attending Clarkdale are transfer students, this will not prohibit transfers to Clarkdale. Initially, it would make little sense for an academic standpoint to require all Northeast Clarke County students to travel multiple distances to attend Enterprise

School when a school constructed for their benefit is located several miles away. Further, this Court finds that the transfer issue was properly before the Court in *USA v. Lauderdale County School District*, Cause No. 1367. During the litigation of *Lauderdale County School District*, students residing in Northeast Clarke County were attending Clarkdale. Interrogatories submitted by Lauderdale showed the total number of students residing in Northeast Clarke County and attending Clarkdale. During the *Killingsworth* litigation, Enterprise represented to the Court and submitted a map showing the Northeast Clarke County students attending Clarkdale. Moreover, Enterprise stipulated that its school district is divided into two (2) attendance areas – Enterprise and Clarkdale. Lastly, as part of an objection to its HEW desegregation plan, Enterprise submitted statistical compilations showing Northeast Clarke County students attending Clarkdale. In short, the Court finds sufficient evidence to conclude that both the district court and the Fifth Circuit Court of Appeals were aware that Northeast Clarke County students were attending Clarkdale when desegregation plans were approved for Enterprise and Lauderdale and the Court envisioned such transfers would continue.

Accordingly, the Court, with the assistance of all parties involved, will formulate a plan which will continue to permit many Northeast Clarke County students to attend Clarkdale. However, the number of students who will attend requires a great deal of consideration.

The first factor to consider in determining the number of Northeast Clarke County students who will attend Clarkdale is the number of students who were

attending Clarkdale during the formalization and eventual final approval of the desegregation plans for Lauderdale and Enterprise. Our analysis, however, does not stop there. The Court must also take into account the number of student transfers to Enterprise from the Stonewall territory and the necessity of maintaining Enterprise as a viable school district. The elimination of transfers from Alabama and any decrease in Stonewall transfers will necessitate some Northeast Clarke County students being denied transfers to Clarkdale Attendance Center. Proximity to the various schools should be a primary factor in developing a workable plan. In addition, the Court must evaluate the effects of the Stonewall student transfers on the desegregation plan of Enterprise and Quitman. Interdistrict transfers will not be permitted where the cumulative effect will reduce desegregation in either Enterprise or Quitman School Districts or would reenforce a dual school system. *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 (5th Cir. 1970) (*En Banc*).

In summary, the Court will allow Northeast Clarke County students to attend Clarkdale. The number of such students will be determined after taking into consideration the number of Northeast Clarke County students attending Clarkdale during the formalization and final approval of the desegregation plans of Enterprise and Lauderdale, the number of students transferring from the Stonewall territory to Enterprise, and the effects the Northeast Clarke County and the Stonewall student transfers have on the desegregation plans of Quitman, Enterprise and Lauderdale School Districts and the continuation of Enterprise as a viable school district.

The method, procedure and implementation of this directive will be decided only after the Court, with the help of the parties and possible outside expert personnel, has conducted a careful and thorough study of various alternatives. In order to begin implementation of this Opinion, the Court directs Lauderdale to update the identification, sex and race of all the students planning to attend Clarkdale in the upcoming 1991-92 school year. The Court has already ordered Enterprise and Quitman to make similar compilations in the Stonewall territory part of this Opinion. Once the compilations from all three (3) school districts become available, the Court and the parties will be in a position to determine the number of Northeast Clarke County students who will be permitted to transfer to Clarkdale.

The Court will reserve ruling on the issue of how much, if any, Enterprise owes Lauderdale for educating those Northeast Clarke county students now attending or who have attended Clarkdale until after a hearing is conducted on this issue.

An Order in conformance with this Opinion, approved as to form by all parties, shall be submitted to the Court within ten (10) days.

THIS the 3rd day of July, 1991.

/s/ John M. Roper
UNITED STATES
MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

THE LAUDERDALE COUNTY SCHOOL DISTRICT, BY AND THROUGH IT [sic] BOARD OF EDUCATION, JOHN L. KNIGHT, GLORIS COOPER, TOMMY S. GUNN, WANDA MCPHAIL, AND ARNOLD M. THREAT — PLAINTIFFS

VERSUS — CIVIL ACTION NO. E88-0059(L)

ENTERPRISE SCHOOL DISTRICT, BY AND THROUGH ITS BOARD OF TRUSTEES, ET AL.

VERSUS — PLAINTIFFS IN INTERVENTION

CONCERNED CITIZENS OF NORTH CLARKE COUNTY — DEFENDANTS

Consolidated With

QUITMAN SCHOOL DISTRICT, BY AND THROUGH ITS BOARD OF TRUSTEES — PLAINTIFFS

VERSUS — CIVIL ACTION NO. E88-0065(L)

ENTERPRISE SCHOOL DISTRICT, BY AND THROUGH ITS BOARD OF TRUSTEES, AND THE CLARKE COUNTY BOARD OF EDUCATION BY AND THROUGH ITS BOARD OF TRUSTEES — DEFENDANTS

CONCERNED CITIZENS OF NORTH CLARKE COUNTY — PLAINTIFFS IN INTERVENTION

ORDER

(Filed Aug. 21, 1991)

This matter comes before the Court *sua sponte* to correct a memorandum opinion and order entered by the Court on July 5, 1991. The following sentence, found on page 32, within footnote five (5) is stricken from the memorandum opinion:

"However, this subsection has been repealed by the Mississippi legislature effective July 1, 1991."

It is, therefore,

ORDERED AND ADJUDGED that the Clerk is directed to strike the above referenced sentence from the memorandum opinion.

SO ORDERED AND ADJUDGED, this the 20th day of Aug., 1991.

/s/ John M. Roper
UNITED STATES
MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

THE LAUDERDALE COUNTY SCHOOL DISTRICT, BY AND THROUGH ITS BOARD OF EDUCATION, JOHN L. KNIGHT, GLORIS COOPER, TOMMY S. GUNN, WANDA MCPHAIL, AND ARNOLD M. THREAT — PLAINTIFFS

VERSUS — CIVIL ACTION NO. E88-0059(L)

ENTERPRISE SCHOOL DISTRICT, BY AND THROUGH ITS BOARD OF TRUSTEES, ET AL — DEFENDANTS

CONSOLIDATED WITH:

QUITMAN SCHOOL DISTRICT, BY AND THROUGH ITS BOARD OF TRUSTEES — PLAINTIFF

VERSUS — CIVIL ACTION NO. E88-0065(L)

ENTERPRISE SCHOOL DISTRICT, BY AND THROUGH ITS BOARD OF TRUSTEES, AND THE CLARKE COUNTY BOARD OF EDUCATION BY AND THROUGH ITS BOARD OF TRUSTEES — DEFENDANTS

OPINION

(Filed June 1, 1992)

On July 5, 1991, this Court entered an Opinion which addressed issues which were presented at the first hearing and reserved certain others for later treatment. *See*

Lauderdale County Sch. Dist. v. Enterprise Sch. Dist., no. E88-0059(L) (July 5, 1991) (hereafter "Launderdale 1")[1] On December 16-17, 1991 these actions came on for a second hearing, or relief phase of the trial, to develop the remaining issues.

This Court, in *Lauderdale 1*, made definitive rulings as to the following issues: As between the plaintiff, Quitman School District (hereafter "Quitman") and the defendants Enterprise School District and the Clarke County Board of Education (hereafter "Enterprise"), this Court ruled that Enterprise was equitably estopped from arguing that the Stonewall District was improperly annexed to Quitman. *Lauderdale 1*, pp. 21-22 This Court further concluded that the decision regarding Quitman's status was in accord with the findings of the three judge panel in *Killinsworth* [sic] *v. Enterprise Consl. School Dist.*, cause no. 1302(E). This Court recognized in *Lauderdale 1* that it has a duty to both maintain the *Killingsworth* directives regarding the racial proportions of students in the affected school districts and to ensure the continued existence of the Enterprise School District. *Id.* at 23.

In the July 1991 decision, this Court also rendered its opinion as to whether students who reside in Northeast Clarke County but who attend Clarkdale[2] were transfer

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[1] Rather than laboring to reproduce the extensive factual and procedural history of these consolidated actions, this Court incorporates by reference the findings of fact and conclusions of law of its previous Opinion of July 5, 1991.

[2] Clarkdale Attendance Center is located on the Lauderdale County and Clarke County line. The School is jointly owned by the Lauderdale County School District and the Enterprise

students, who, as such, are subject to certain statutory requirements. This Court held that the students in that group were transfer students, but that future transfers would be allowed under some plan to be devised after further consideration.

The issues remaining, as between Quitman and Enterprise, are the method of determining which and how many Stonewall area students will attend Enterprise, and what amount of money, if any, Quitman owes to Enterprise for educating the Stonewall area students in the past and the method of computing future compensation.

The issues remaining, as between Lauderdale and Enterprise are: the specific method of determining which and how many Northeast Clarke County students will attend Clarkdale, and what amount, if any, Enterprise owes to Lauderdale for educating Northeast Clarke county students in the past and the future method of computing compensation.

Findings of Fact and Conclusions of Law

In *Lauderdale 1* this Court avoided the simple solutions of allowing the Enterprise School Board to require that all Clarkdale students attend Enterprise and the Quitman School Board to require that all Stonewall students attend Quitman, because of the continuing obligation of the Federal Court to oversee school

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School District proportionately to the amounts contributed by said parties pursuant to a contract of February 13, 1962.

desegregation.[3] In fact, the potential interference with existing school desegregation decisions serves as the

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[3] A federal Court maintains a continuing obligation to oversee a school desegregation remedy. *See Green v. County School Board*, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968). "Until [a] unitary system has been achieved, a district court overseeing the desegregation effort must retain jurisdiction to insure that the present effects of past segregation are completely removed." *Davis v. East Baton Rouge Parish Sch. Bd.*, 721 F.2d 1425 (5th Cir. 1983) (citing *Green*, 391 U.S. at 439). There remains a duty to " . . . adjust for demographic patterns and changes that predate the advent of a unitary system." *Davis*, 721 F.2d at 1435.

In the recent United States Supreme Court decision of *Freeman v. Pitts*, 1992 U.S. WL 59190 (March 31, 1992), the Court held that a district court may, upon motion of the school district, relinquish its supervision over those aspects of the desegregation decree in which the school district has achieved compliance. The Court also discussed, in four separate opinions, the factors a court should consider in evaluating whether the school district is unitary with respect to demographic changes, *i.e.*, whether the demographic changes are unrelated to the prior constitutional violation. The opinions emphasize that, in evaluating a motion for declaration of unitary status, the court should consider, *inter alia*, whether racially identified schools and other vestiges of segregation themselves contributed to the demographic changes by, *e.g.* encouraging caucasians to move into neighborhoods in attendance zones for white school. *Freeman* is therefore not relevant to or controlling in this action. No party here has moved for lifting of federal supervision due to alleged unitary status. Rather, the issues herein have been limited to disputes between three separate school districts over district boundary lines, transfer of students, and funding.

Further, this Court notes that all parties were provided a copy of this Court's opinion earlier this year, prior to the Supreme Court's decision in *Freeman*, in order to facilitate planning for the upcoming academic year. Consideration of the effect of *Freeman* on these actions and monetary issues herein has been delayed pending further briefing on this issue by the parties.

basis for federal jurisdiction in the case *sub judice.* This Court must frame its remedy in light of the two desegregation suits filed in the United States District Court against the various parties to this action. The first, *Killingsworth v. Enterprise Consolidated School District,* Cause No. 1302(E) involved the named plaintiff versus Enterprise, Quitman and Clarke County Board of Education and sought to dismantle the racially discriminatory school system being then operated in Clarke County, Mississippi. The later suit, *United States of America v. Lauderdale County,* Cause No. 1367 was directed at desegregating the Lauderdale County Schools. The Department of Health, Education and Welfare desegregation plans which resulted from the litigation in *Lauderdale County* and *Killingsworth* and further described by this court in *Lauderdale 1* provided as follows:

The Clarkdale plan called for immediate desegregation, including staff members and teachers. The original plan was modified on November 19, 1969, requiring Clarkdale to function as an attendance center with grades one (1) through twelve (12) for all students residing in the zone surrounding Clarkdale School. The desegregation plan permitted interdistrict transfers only on a "nondiscriminatory" basis, and prohibited transfers where the cumulative effect would reduce desegregation in either school district or would reinforce a dual school system. The desegregation plan, as modified, projected that Clarkdale would have a 74% white to 26% black student body population.

A desegregation plan was also filed for Enterprise by the HEW on August 11, 1969. The desegregation plan projected that both Enterprise and Quitman would have a

53% white to 47% black student body population. The HEW plan was silent as to Northeast Clarke County students who attend Clarkdale School, but contemplated, in this Court's opinion, the transfer of students from the Stonewall area to the Enterprise School.

After objection to the respective plans by the School Districts, the Fifth Circuit granted an extension of time to submit terminal desegregation plans. On appeal to the U.S. Supreme Court, the Fifth Circuit was reversed and the cases remanded with directions that the School Districts accept the desegregation plans submitted by the HEW. *See, Alexander v. Holmes County Bd. of Ed.*, 396 U.S. 19, *reh'g denied*, 396 U.S. 976 (1969).

In 1969 when the desegregation plans were formulated, the Quitman District contained some 3,146 students, 1,490 (47%) black and 1,656 (53%) white. Quitman's actual makeup in the 1969-70 school year was a total of 2,929 students, 1,458 (49.977%) black and 1,471 (50.022%) white. (Exhibit 35 to Quitman stipulation of November 6, 1989). Enterprise School was projected to contain some 768 students, 363 (47%) black and 405 (53%) white, in 1969. The actual Enterprise enrollment for the 1970-71 school year totaled 858 students, 339 (40%) black and 519 (60%) white. (Exhibit P-6 to the Lauderdale Stipulation of November 6, 1989). Clarkdale contained a projected total of 788 students, 203 (26%) black and 585 (74%) white. The actual enrollment at Clarkdale as of April 15, 1970 was 553 white (80%) students and 142 black – (20%) for a total of 695. The Lauderdale County projected student population totaled 5,078, of which 1,926 (38%) were black and 3,150 (62%) were white. (Exhibits 34 and 35 to Lauderdale Stipulation of November 6, 1989). The actual

enrollment for the Lauderdale County School District, as of April 15, 1970 was 4,583 which represented 2,867 (63%) white students and 1,716 black (37%).

In 1962, Lauderdale County and Enterprise entered into a written agreement whereby students from Northeast Clarke County would attend Clarkdale, and students from the Meehan area of Lauderdale County would attend Enterprise. In the 1991-92 School year, the Lauderdale County School District, by and through its Board of Education, approved the transfer of 50 students from the old Meehan area, consisting of 36 white students, 13 black, and one other. (Stipulation of the parties, December 16, 1991) Similarly, the Clarke County Board of Education approved the transfer of 309 Northeast Clarke County students, 285 white and 24 black, for attendance at the Clarkdale School in the 1991-92 school year. *Id.* Enterprise has also accepted transfers under an arrangement with Jasper County under which some 83 white students are currently allowed to transfer into Enterprise. Counsel for East Jasper has represented to this Court that the transfers from Jasper County will, in all probability, cease in the future.

Beginning in the 1962-63 school year, Quitman and Enterprise entered into a contract for the transfer of black students from the Stonewall Area to Enterprise. In the 1968-69 school year, 135 black students from the Stonewall area attended schools in Enterprise. The total number of transfer students has grown steadily over the years, with approximately 331 students transferring to Enterprise for the 1991-92 school year (that number includes 31 students who reside in Quitman, but who attend Enterprise because their parents or legal guardians

are Enterprise instructors or certificated employees. Since 1984-85 an average of 99 black students per year have transferred to Enterprise.

The current school year, 1991-1992, Quitman has some 2,609 students, 54% black and 46% white. Enterprise currently educates 819 students, 29% black and 71% white. Clarkdale currently has some 1,052 students on its rolls, with a 10% black, 90% white ratio.

By this opinion the Court will effectuate its previous ruling in *Lauderdale 1*, (that the Stonewall area is legally annexed to Quitman, that Northeast Clarke County students attending Clarkdale are transfer students and that the Enterprise School District should be maintained as a viable school district) while simultaneously considering the conclusions reached by the Fifth Circuit in *Killingsworth* and *Lauderdale County*. Yet another concern of this Court is the operation of a Mississippi Statute governing enrollment of students in the school district of their residence. Mississippi Code Annotated, § 37-15-29, provides, in pertinent part:

> (1) Except as provided in subsections (2) and (3) of this section, no minor child may enroll in or attend any school except in the school district of his residence, unless such child be lawfully transferred from the school district of his residence to a school in another school district in accord with the statutes of this state now in effect or which may be hereafter enacted.
>
> (2) Those children whose parent(s) or legal guardians are instructional personnel or certificated employees of a school district may at such employee's discretion enroll, and attend the

school or schools of their parent's or legal guardian's employment regardless of the residence of the child.

(3) No child shall be required to be transported in excess of thirty (30) miles on a school bus from his or her home to school, or in excess of thirty (30) miles from school to his or her home, if there is another school in an adjacent school district located on a shorter school bus transportation route by the nearest traveled road. Those children residing in such geographical situations may, at the discretion of their parent(s) or legal guardian(s), enroll and attend the nearer school, regardless of the residence of the child.

* * *

Miss. Code Ann. § 37-15-29 (Supp. 1991).

This Court, in *Lauderdale 1* found that Enterprise should be protected as a viable school district. Opinion of July 3, 1991, at p. 23. Enterprise School District has remained a viable since the inception of the *Killingsworth* desegregation order with a total student enrollment of as high as 858 and as low as 768. The Enterprise Superintendent, Michael D. Taylor, testified at the trial that in order to maintain its accreditation, Enterprise must either increase its student base or increase its ad valorem tax revenues pursuant to Sections 37-57-105 and 37-57-107, *Miss. Code Ann.* (1990). Under section 37-57-105, Enterprise has the right to raise its ad valorem taxes by an additional seven percent annually. Mr. Taylor confirmed at trial that Enterprise has employed this provision each year since the creation of this authority by the Mississippi Legislature in 1986. Under Sections 37-57-105 and -107 a school district may increase its total ad valorem tax up to

ten percent annually if no petition against such increase is filed by not less than twenty percent of the electorate of the school district. If twenty percent of the electorate do petition against the increase, Enterprise could still receive the ten percent annual increase by winning a simple majority election called to consider the increase. Mr. Taylor testified at trial that because of Enterprise's relatively fixed ad valorem tax evaluation and the recently enhanced requirements of the State Department of Education (requiring a minimum of 25½ Carnegie units of instruction for accreditation), the school needs from 900 to 1,110 students to remain accredited. Therefore, Enterprise now seeks to receive transfers which would increase its student population beyond its previous highest level by 42 to 252 students (with Enterprise having its highest enrollment, 858, in the 1970-71 school year).

By finding that the Stonewall area is legally annexed to Quitman, the easy solution is to find that all Stonewall students must attend Quitman, unless allowed to transfer by Quitman. However, the implementation of this solution would lead to unacceptable results. Initially, the Enterprise school district would lose approximately 100-125 black students from the Stonewall area (currently, 117 of the 300 Stonewall area students attending Enterprise are black, See Exhibits Q-5 and Q-6). This result contradicts *Killingsworth*, which clearly envisioned the continued transfer of black students from the Stonewall area to Enterprise school in order to achieve the desegregation goals. Further, extracting all Stonewall students from Enterprise would cause an instant decrease below the minimum number of students necessary to maintain Enterprise as a viable school District. Enterprise would,

in turn, extract all Northeast Clarkdale students from Clarkdale to replenish its student population. The resulting *Killingsworth* difficulty becomes apparent upon considering that: the Enterprise district, excluding the Stonewall students, has a 79:21 white to black ratio, and the pool of students in the Northeast Clarke County area consists of some 281 students, 267 white and 14 black. Therefore, the vast majority of the students who would be pulled back to Enterprise from Northeast Clarke County would be white, and white portion of the race ratio would rise significantly.

Again, the projected racial make-up in Quitman for the 1969-70 school year was 47% black and 53% white, with a total student population of 3,146. The actual numbers that year were 2,929 students, 1,458 (49.077%) black and 1,471 (50.022%) white. Since 1986-87 the total student population at Quitman has generally declined to the 1991-92 level of 2,609. During that period, the black/white ratio has evolved from approximately 50% black, 50% white to the 1991-92 level of 54% black, 46% white. *See* exhibit Q-8. Therefore, the racial balance in Quitman has evolved in the direction of a majority black population. By requiring the Stonewall area black students, currently attending Enterprise, to return to Quitman, this Court would further increase the racial disparity there, in opposition to the *Killingsworth* objectives.

Similarly, withdrawing any black students from the Clarkdale School would not be prudent. Because Clarkdale School currently has a 90:10 white to black ratio, this Court would certainly refrain from causing in any further erosion of racial balance there. Lauderdale County, as a whole, currently has some 6,991 students

with an approximate 70:30 white to black radio. The HEW ratio for Clarkdale, arising from the *Lauderdale County* litigation, projected that Clarkdale would attain a 74:24 white to black student population. With the knowledge of this continuing erosion of race proportions, this Court will not remove blacks from Clarkdale and further widen the gap.

This Court is of the opinion that the objectives set forth herein would best be obtained by:

> allowing the Quitman School District to control the school assignment, by transfer refusal, of students residing in the Stonewall area, except for a specified number of black students who will be allowed to transfer to Enterprise in order to uphold the mandates of *Killingsworth*;
>
> Allowing Enterprise to control the assignment, by transfer refusal, of students residing in the Northeast – Clarke County area, except for the black students who reside there and a specified number of white students. All black students currently attending Clarkdale will be allowed to continue transferring there to avoid further erosion of the black-white ratio in the Clarkdale School. Likewise, any black students residing in the Northeast Clarke County area in the future, will be allowed to transfer to the Clarkdale School. White students will be allowed to petition for transfer to Clarkdale with such determination to be made on criteria specified herein; further,
>
> In order to satisfy the mandates of Mississippi Code Annotated § 37-15-29(3), this Court will require the Enterprise School Board to consider the distance that a particular student lives

from the Enterprise School, especially if that distance extends more than thirty miles, in determining whether a particular request for transfer to Clarkdale is approved. However, the School Board shall not be bound thereby.

Further, the School Boards of both Quitman and Enterprise shall continue to permit the transfer of those students transferred under the authority of Miss. Code Ann. § 37-15-29(2) (allowing children of instructional personnel or certificated employees to attend the school of the parent or legal guardian's employment) and those students shall not be counted in the minimum or maximum numbers set out herein.

I. Stonewall Students Attending Enterprise

The Court, after considering the testimony elicited at the trial, voluminous written proposals, various exhibits, and argument of counsel, adopts the following plan to identify which of the students residing in the Stonewall area will be allowed to continue to attend the Enterprise School District, and which students may be refused transfer by Quitman:

A. All white Stonewall area students enrolled in the Enterprise School District during the 1991-1992 school year in grades K, 1, 2, 3, 4, 5, 6, 7, 8, and 9 will attend the Quitman School District beginning with the 1992-1993 school year unless a transfer request is approved by the Quitman and Enterprise School Boards in accordance with state law.

B. All white Stonewall area students who will enter kindergarten beginning with the 1992-1993

school year will attend the Quitman School District unless a transfer request is approved by the Quitman and Enterprise School Boards in accordance with state law.

C. Any white Stonewall area students who were not enrolled in the Enterprise School District during the 1991-1992 school year will continue/begin to attend the Quitman School District during the 1992-1993 school year unless a transfer request is approved by the Quitman and Enterprise School Boards in accordance with state law.

D. Beginning with the 1992-1993 school year a minimum of 100 and a maximum of 125 black Stonewall area students will be allowed to transfer to the Enterprise School District. Specifically, the Quitman and Enterprise School Boards must allow *all* requests for transfer by black students up to 125. If less than 100 black students request transfer to Enterprise, then the minimum number of 100 shall be assigned by Quitman to attend Enterprise, utilizing the criteria set forth herein below. If a number greater than 125 request transfer to Enterprise, then Quitman shall use the criteria set forth herein to determine which of the students will be in the group of 125 transferred to Enterprise.

Only those white Stonewall area students who were enrolled in the Enterprise School District during the 1991-1992 school year in grades 10, 11, and 12 will be allowed to enroll in the Enterprise School District for the 1992-1993 school year, absent a valid transfer.

E. Complete phasing out of the white Stonewall area students will occur as the white students who were enrolled in the Enterprise

School District in grades 11 and 12 graduate from the Enterprise School District. The phasing out process can be described as follows:

School Year 1992-1993

All white Stonewall area students who were enrolled in the Enterprise School District in grades K, 1, 2, 3, 4, 5, 6, 7, 8, and 9 during the 1991-1992 school year will attend the Quitman School District beginning with the 1992-1993 school year, absent a valid transfer approved by both school boards.

A minimum of 100 and a maximum of 125 black Stonewall Area students will be allowed to attend to the Enterprise School District during the 1992-1993 School Year, upon request for transfer. If necessary, selection of the black students will be made on specified criteria, as follows:

1. Proximity of student's residence to the Enterprise School District.
2. Grade level of student.
3. Length of student's enrollment in the Enterprise School District.
4. Brothers and sisters enrolled in the Enterprise School District.

White Stonewall area students who were enrolled in the Enterprise School District in grades 10, 11, and 12 during the 1991-1992 school year will be allowed to continue to attend in the Enterprise School District in grades 11 and 12 during the 1992-1993 school year.

School Year 1993-1994

All white Stonewall area students in grades K, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 will attend the Quitman School District during the 1993-1994 school year, absent a valid transfer.

A minimum of 100 and a maximum of 125 black Stonewall area students will be allowed to attend the Enterprise School District during the 1993-1994 school year, upon request for transfer. If necessary, selection of the black students will be made on specified criteria, as follows:

1. Proximity of student's residence to the Enterprise School District.
2. Grade level of student.
3. Length of student's enrollment in the Enterprise School District.
4. Brothers and sisters enrolled in the Enterprise School District.

White Stonewall area students who were enrolled in the Enterprise School District during the 1992-1993 school year in grades 11 and 12 and who also met the 1991-1992 enrollment criteria will be allowed to attend Enterprise School District in grade 12 during the 1993-1994 school year.

School Year 1994-1995

All White Stonewall area students in grades K, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 will attend the Quitman School District during the 1994-1995 school year, absent a valid transfer.

A minimum of 100 and a maximum of 125 black Stonewall area students will be allowed to attend the Enterprise School District during the 1994-1995 school year, upon request for transfer. If necessary selection of the black students will be made on specified criteria, as follows:

1. Proximity of student's residence to the Enterprise School District.

2. Grade level of student.

3. Length of student's enrollment in the Enterprise School District.

4. Brothers and sisters enrolled in the Enterprise School District.

F. Financial payments of specified local revenue in a reasonable amount, to be determined by the two school districts,[4] will be paid by the Quitman School District during the transition years, and thereafter, as follows:

School Year 1992-1993

Payment will be made for eligible white Stonewall area students in grades 11 and 12 only and for a minimum of 100 and a maximum of 125 black Stonewall area students, depending upon the number of requested transfers.

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[4] In the event that the school districts are unable to reach agreement on the amount of financial payment due, the amount will be determined by the Court.

School Year 1993-1994

Payment will be made for eligible white Stonewall area students in grade 12 only and for a minimum of 100 and a maximum of 125 black Stonewall area students, depending upon the number of requested transfers.

School Year 1994-1995 and thereafter

Payment will be made for a minimum of 100 and a maximum of 125 black Stonewall area students, depending on the number of requested transfers.

II. Northeast Clarke County Students Attending Clarkdale School

The Court, after considering the testimony elicited at the trial, voluminous written proposals, various exhibits, and argument of counsel, adopts the following plan to identify which of the students residing in the Northeast portion of Clarke County[5] will be allowed to continue to attend the Clarkdale Attendance Center, and which students may be refused transfer by Enterprise:

A. All black students who reside in Northeast Clarke County and who currently attend the Clarkdale school will be allowed to continue attending the Clarkdale School, upon request for transfer.

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[5] The Northeast Clarke County area beginning in Range 15 East and extending through Range 18 East (ending at the Mississippi/Alabama state line) and approximately encompassing Township 4 North. More particularly identified in exhibit CC-1.

B. All white Northeast Clarke County students enrolled in the Clarkdale School District during the 1991-1992 school year in grades K, 1, 2, 3, 4, 5, 6, 7, 8, and 9 will attend school in the Enterprise School District beginning with the 1992-1993 school year unless a transfer request, as described herein below, is approved by the Lauderdale and Enterprise School Boards in accordance with state law.

C. All white Northeast Clarke County students who will enter kindergarten beginning with the 1992-1993 school year will attend the Enterprise School District, unless a transfer request is approved by the Enterprise and Lauderdale School Boards in accordance with state law.

D. Any white Northeast Clarke County students who were not enrolled in the Clarkdale School during the 1991-1992 school year will continue/begin to attend the Enterprise School District during the 1992-1993 school year, unless a transfer request is approved by the Enterprise and Lauderdale School Boards in accordance with state law.

E. Beginning with the 1992-1993 school year a maximum of 125 white Northeast Clarke County students shall be allowed to continue attending the Clarkdale School by transfer approval. Selection of those students will be made on specified criteria, as follows:

1. Proximity of students residence to the Clarkdale School.

2. Distance of the student's residence from the Enterprise School District.

3. Grade level of student.

4. Length of student's enrollment in the Clarkdale School.

5. Brothers and sisters enrolled in the Clarkdale School.

F. The remainder of the white Northeast Clarke County students, enrolled in, or seeking enrollment in, Clarkdale will be phased out as follows:

School Year 1992-1993

Only those white Northeast Clarke County students who were enrolled in the Clarkdale School during the 1991-1992 school year in grades 10, 11, and 12 will be allowed to enroll at the Clarkdale School for the 1992-1993 school year.

All white Northeast Clarke County students who were enrolled in the Clarkdale School in grades K, 1, 2, 3, 4, 5, 6, 7, 8, and 9 during the 1991-1992 school year will attend the Enterprise School District beginning with the 1992-1993 school year, absent a valid transfer approved by both school boards, however:

A maximum of 125 white Northeast Clarke County students, in grades 1 through 10, will be assigned to attend the Clarkdale School during the 1992-1993 School Year, upon request for transfer. Selection of those students will be made on specified criteria, as follows:

1. Proximity of student's residence to the Clarkdale School.

2. Distance of the student's residence from the Enterprise School District.

3. Grade level of student.

4 Length of student's enrollment in the Clarkdale School.

5. Brothers and sisters enrolled in the Clarkdale School.

School Year 1993-1994

All white Northeast Clarke County students in grades K, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 will attend the Enterprise School District during the 1993-1994 school year, absent a valid transfer approved by both school boards, however:

A maximum of 125 white Northeast Clarke County students, in grades 1 through 11 will be allowed to attend the Clarkdale School during the 1993-1994 school year, upon request for transfer. Selection of those students will be made on specified criteria, as follows:

1. Proximity of student's residence to the Clarkdale School.

2. Distance of the student's residence from the Enterprise School District.

3. Grade level of student.

4. Length of student's enrollment in the Clarkdale School.

5. Brothers and sisters enrolled in the Clarkdale School.

White Northeast Clarke County students who were enrolled in the Clarkdale School during the 1992-1993 school year in grades 11 and 12 and who also met the 1991-1992 enrollment criteria will be allowed to attend Clarkdale School in grade 12 during the 1993-1994 school year.

School Year 1994-1995

All white Northeast Clarke County students in grades K, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 will attend the Enterprise School District during the 1994-1995 school year, absent a valid transfer approved by both school boards, however:

A maximum of 125 white Northeast Clarke County students will be allowed to attend the Clarkdale School during the 1994-1995 school year, upon request for transfer. Selection of those students will be made on specified criteria, as follows:

1. Proximity of student's residence to the Clarkdale School.

2. Distance of the student's residence from the Enterprise School District.

3. Grade level of student.

4. Length of student's enrollment in the Clarkdale School.

5. Brothers and sisters enrolled in the Clarkdale School.

G. Financial payments of specified local revenue in a reasonable amount, to be determined

by the school districts,[6] will be paid by the Enterprise School District during the transition years as follows:

School Year 1992-1993

Payment will be made for those eligible white Northeast Clarke County transfer students in grades 11 and 12 only; and for a maximum of 125 white Northeast Clarke County transfer students, depending upon the number of requested transfers.

School Year 1993-1994

Payment will be made for those eligible white Northeast Clarke County transfer students in grade 12 only; and for a maximum of 125 white Northeast Clarke County transfer students, depending upon the number of requested transfers.

School Year 1994-1995 and thereafter

Payment will be made for a maximum of 125 white Northeast Clarke County transfer students, depending upon the number of requested transfers.

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[6] In the event that the school districts are unable to reach agreement on the amount of financial payment due, the amount will be determined by the Court. Further, financial payments should also include amounts for black transfer students, as well as students transferred pursuant to § 37-15-29(2) Mississippi Code Annotated (children of employees).

III. MONETARY ISSUES

This Court defined the concept of attendant funds in the July 3, 1991 opinion as:

> those public funds designated for the educational support of students within a school district. When students remain in and are educated by a particular school district, then public funds attributable to the educational support of such students remain within that school district. When a student attends a school outside his/her school district, the attendant funds are to follow the student provided the student is legally attending that school district.

At issue between the parties herein is which formula to apply in calculating the amount of attendant funds due for all legally transferred students and for what period of time those amounts are to be calculated.

A. Lauderdale and Enterprise

On June 3, 1988 this action was removed from the Chancery Court of Clarke County where it was filed as a Declaratory Judgment action. The state court complaint sought equitable relief based on theories of constructive trust, equitable assignment, conversion, specific performance, and apportionment and contribution of co-obligators. *See* Complaint for Declaratory Judgment. The original filing requested an accounting of funds, forfeiture of bonds of fiduciaries or public officers, discovery of evidence, and to avoid a multiplicity of suits. Lauderdale further alleged a willful breach of the agreement between the parties and fraudulent conversion of funds

by Enterprise. The history giving rise to this action may be summarized as follows:

On February 13, 1962 Lauderdale and Enterprise entered into a contract whereby the students residing within the Northeast Clarke County area of the Enterprise School District were assigned and transferred for attendance at the Clarkdale Attendance Center of the Lauderdale School District,[7] and those students residing within the Meehan area of the Lauderdale County School District, who desired to attend Enterprise were allowed to transfer there. The contract was in force for twenty-five years and expired at the conclusion of the 1986-87 school year. The contract, annexed to the state court complaint, expressly provided, in part:

X

> All state funds of every description, except transportation funds, shall follow the child, and shall accrue to and be paid directly by the state to the district in which the child actually attends school, and for this purpose the Clarkdale Attendance Center shall be considered to be in the Lauderdale County School District so long as it shall operate the same.

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[7] The Clarkdale Attendance Center is jointly owned by the Lauderdale and Enterprise School Districts in proportion to the amounts contributed by the parties pursuant to the February 13, 1962 contract. Because Enterprise has not contributed to the operation of the school, this Court recognizes that the parties consider the Clarkdale Attendance Center to be part of the Lauderdale School District alone.

XI

The total cost of all maintenance, additional teacher's salaries not covered by minimum program funds, repairs, and all other expenses, except transportation, of each district shall be computed at the end of each school year. Such total cost for each district shall be divided by the total number of students in average daily attendance in each district to obtain the "per student cost". The "per student cost" of the Lauderdale County School District as thus obtained shall be multiplied by the number of Lauderdale County Students in average daily attendance in the Clarke County Consolidated School District, and the sum total shall be paid by the Lauderdale County School District unto the Clarke County Consolidated School District on or before the first day of each July. The same procedure shall be used in computing the "per student cost" for the Clarke County Consolidated School District and the "per student cost" so determined shall be multiplied by the number of Clarke County Consolidated School District students in average daily attendance in the Lauderdale County School District and for this purpose the Clarkdale Attendance Center shall be considered to be in the Lauderdale County School District so long as it shall operate the same, and the total sum thus obtained shall be paid by the Clarke County Consolidated School District unto the Lauderdale County School District on or before the first day of each July.

* * *

XIV

This agreement may be amended from time to time by a majority vote of each of said parties, and the concurrence therein of both the Clarke County Board of Education and the State Educational Finance Commission.

* * *

XVI

The breach of any part of this agreement by either party thereto shall not alter the binding effect of all other covenants and agreements herein contained upon both of said parties.

Agreement between the Lauderdale County Board of Education and the Board of Trustees of the Clarke County Consolidated School District with reference to the construction, erection, maintenance and operation of Clarkdale Attendance Center, and other related school matters. (annexed to the state court complaint for declaratory relief, hereafter "the February 13, 1962 contract).

The parties honored the agreement for twenty-three years, with the last payment being made following the 1984-85 academic year.[8] For the remaining two years

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[8] One notable change during that period was that beginning with the January 1970 semester all students, not just white students, residing within the Northeast Clarke County area of the Enterprise School were designated, transported, and/or transferred for attendance at the Clarkdale Attendance Center, and all students, not just white students, residing within the Meehan area of the Lauderdale County School District desiring to attend were designated, transported, and/or transferred to Enterprise.

under the contract, Enterprise made no payment of attendant funds to Lauderdale as required by the terms of the agreement. Enterprise argues that no payment was made because the contract was materially breached by Lauderdale's failure to assign and transport to Enterprise all students in the Meehan area during the last two years of the contract. (*citing* Stipulation of the parties, December 19, 1991, paragraph 23). Paragraph 23 of the Stipulation goes on to note, however, that all of the students in the Meehan area were given "freedom of choice" by Lauderdale as to which school they would attend – Clarkdale or Enterprise. *Id.* The stipulation further states that all of the students in that area were not transferred for several years prior to the 1985-1986 school year, and at no time after the contract expired. Enterprise also argues that Lauderdale breached the agreement by refusing to consider input from Enterprise regarding the hiring of staff members.

In this action, Enterprise alleges that Lauderdale materially breached the contract between the parties, therefore, the contract should be terminated, and payment excused. In order to prevail on this argument, Enterprise must demonstrate that Lauderdale materially breached some term or terms of the contract. The Mississippi Supreme Court has defined material breach as:

> a failure to perform a substantial part of the contract or one or more of its essential terms or conditions, or if there is such a breach as substantially defeats its purpose, or when the breach of contract is such that upon a reasonable construction of the contract, it is shown that the parties considered the breach as vital to the existence of the contract. (citations omitted)

UHS-Qualicare v. Gulf Coast Comm. Hosp., 525 So.2d 746, 756 (Miss. 1987), *reh'g dismissed*, 525 So.2d 758 (Miss. 1988). Both parties bound themselves to certain obligations regarding transportation of students. (*see* paragraph IX of the 1962 contract). The parties stipulate, however, that Lauderdale ceased to transport students several years prior to its failure to make payment on the contract in 1985. (Stipulation of the parties, December 19, 1991). Therefore, Enterprise continued to meet its obligations under the contract without objecting to the method of transportation of the Meehan students for several years. Upon consideration of this fact and the testimony adduced at trial, this Court is of the opinion that the failure to transport was not an essential term or condition of the contract, the failure did not substantially defeat the purpose of the contract, nor did the parties consider the breached term as vital to the existence of the contract.

Similarly, the alleged failure of Lauderdale to consider input from Enterprise in regard to the hiring of staff members is asserted as a material breach of the agreement. The contract served two broad functions: first, it was to allocate ownership of the land, buildings, and related school facilities comprising the Clarkdale Attendance Center as between Lauderdale and Enterprise; and second, to facilitate the transfer of students from the Meehan area to Enterprise and from the Northeast Clarke area to Clarkdale. This Court has already recognized that the parties consider the Clarkdale Attendance Center to be under the control of Lauderdale County, pursuant to the terms of the instant contract. (*see* fn. 7). Therefore, this allegation of material breach of a term of the contract lends to the untenable conclusion that the validity of the

entire contract, including that portion of the contract regarding the allocation of ownership of Clarkdale School, is now being challenged. Upon consideration of the forgoing [sic] and the testimony adduced at trial, this Court is of the opinion that the requirement that Lauderdale consider the input of Enterprise as to the hiring of staff members at Clarkdale did not constitute an essential term or condition of the contract, the failure to consider such did not substantially defeat the purpose of the contract, and finally that the parties did not consider the breached term as vital to the existence of the contract.

A demand was made by Lauderdale to Enterprise for attendant funds covering a six year period commencing with the 1985-86 school year and continuing through the 1990-91 school year. The first actual demand for payment from Enterprise was apparently made by Lauderdale in February of 1988. *see* Exhibit L2-8. The receipt of the demand and its rejection by Enterprise is evidenced by the minutes of the meeting of the Board of Trustees of the Enterprise School District of November 8, 1988. *see* Exhibit L2-14.

Following the expiration of the contract, the parties had no memorialization of their rights and duties in the transfer. They were, however, bound by Mississippi law. Therefore, in order to clarify those rights and duties the Court will develop a brief chronology of the applicable Mississippi student transfer statutes.

In the same year that the contract was created, the Mississippi legislature enacted a statute allowing the transfer of individual students from one school district to another by the mutual consent of the boards of trustees of

all school districts concerned. Gen. Laws 1962, ch. 357, § 1, (§§ 6248-07) (effective May 10, 1962). That section provided that:

> legally transferred students going from one school district to another would be counted for teacher allotment and allotments for other current costs by the school district wherein the pupils attend school; but shall be counted for transportation allotment purposes in the school district which furnishes or provides the transportation.

Id. That code section made no mention of payment of funds between the districts upon transfer, or the issuance of warrants, or the like.

In 1972 the legislature created two separate statutes addressing the transfer of students, one at Miss. Code Ann. § 37-15-31 (1972) (effective November 1, 1973), and the other entitled "Counting of legally transferred students" (Miss. Code Ann. § 37-19-33) (1972). The legislature extracted the transfer student allotment language from the 1962 statute (set out herein above) and created Section 37-19-33. That section provides, in full:

> Students going from one school district, other than a municipal separate school district shall be counted for teacher allotment and allotments for other current costs by the school district wherein the pupils attend school, including maintenance costs, but shall be counted for transportation allotment purposes in the school district which furnishes or provides the transportation. When such transfer shall be from one county to another, the county superintendent of

> education of the county from which said students are transferred shall, within thirty days after a request in writing to do so by the county superintendent of education of the other county, issue his warrant in an amount equal to the total number of pupils attending the school from such county multiplied by the average expenditure per pupil in the county from which the pupils are transferred, on the maintenance fund to pay any sums due hereunder to the said school district wherein the said students are attending. His failure to do to [sic] renders him liable therefore in the amount thereof on his official bond.

Miss. Code Ann. § 37-19-33 (1972). On July 1, 1977 Miss. Code Ann. § 37-19-33 was amended and recodified as Miss. Code Ann. § 37-19-27, without significant change. On July 1, 1987 other amendments to Miss. Code Ann. § 37-19-27 became effective. Specifically, the language was revised to include student transfers from "one district to another" and to hold a district superintendent liable on his official bond (as opposed to the former provisions applicable to transfer from one county to another, and holding the county superintendent liable on his official bond). Gen. Laws 1986, ch. 492, § 104. Also effective on July 1, 1987 was an amended Miss. Code Ann. § 37-19-31 which provided for an allotment in the minimum program fund of each school system for each teacher unit in excess of fifty, with a $15,000 minimum and an additional amount of $50 per teacher unit in excess of fifty, but not to exceed $25,000. Further, § 37-19-27 provided for distribution of those funds by the receiving school districts.

Miss. Code Ann. § 37-19-27 was amended again in 1989 to provide that boards which approve transfers were required to enter into contracts "for the payment or non-payment of any portion of their local maintenance funds which they deem fair and equitable in support of any transferred student". *Id.* (Supp. 1989). That code section further provides that local maintenance funds shall only be transferred to the extent specified in the contract entered into by the affected school districts and authorized the accepting district to accept tuition from such students for whatever period specified in the contract.

Finally, the legislature has recently amended Miss. Code Ann. § 37-19-27 to further address the payment of local maintenance funds, leaving the requirement of a contract regarding the transfer of local funds intact. *Id.* (Supp. 1990) (effective June 30, 1991).

The formula for determining attendant funds for two of the six school years in question was contemplated by the parties in their February 13, 1962 contract. Lauderdale and Enterprise have stipulated to the contract formula, figures, calculations, as well as the accuracy of the compilation for the two years remaining under the contract.[9] See Exhibit L2-1.

The Lauderdale and Enterprise have stipulated to the Average Daily Attendance ("ADA") for the academic years beginning with 1985-86 and continuing through 1991-92 as follows:

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[9] The last two years under the contract were 1985-86 and 1986-87.

ADA of Northeast Clarke County Students attending Clarkdale

1985-86 - 248.32
1986-87 - 265.75
1987-88 - 263.15
1988-89 - 277.92
1989-90 - 278.31
1990-91 - 266.44

ADA of Meehan Area (Lauderdale) Students attending Enterprise

1985-86 - 39.37
1986-87 - 38.85
1987-88 - 37.94
1988-89 - 38.10
1989-90 - 31.19
1990-91 - 40.91

Stipulation of the parties, December 16, 1991. This Court is of the opinion that the first two academic years in question, 1985-86 and 1986-87, were covered by the existing contract between the parties. As a result, Lauderdale shall recover funds for that period, as calculated using the contract formula and stipulated ADA figures set out herein above.

Applying the contract formula, set out herein above, the following amounts are found to be owing to Lauderdale under the February 13, 1962 contract:

Academic Year	Amount Owed to Lauderdale
1985-86	$ 29,237.54
1986-87	$ 74,355.05

Following the 1986-87 academic year, students from Northeast Clarke County continued to attend school in Clarkdale and students from the Meehan area continued to attend school in Enterprise. The February 13, 1964 contract, consistent with the applicable Mississippi code provisions, expired by its own terms after the 1986-87 academic year. Thereafter, the rights of the parties regarding transfer of students and payment of local funds were directly governed by the applicable Mississippi Code provisions. Specifically, Mississippi Code Annotated § 37-19-27 was in force and applicable to transfers of students during the 1987-88 and 1988-89 school years. Gen. Laws 1986, ch. 492, § 104 (effective July 1, 1987). That section provides:

> Legally transferred students going from one school district to another shall be counted for teacher allotment and allotments for supportive services by the school district wherein the pupils attend school, including maintenance costs, but shall be counted for transportation allotment purposes in the school district which furnishes or provides the transportation. When such transfer shall be from one school district to another, the superintendent of schools of the school district from which said students are transferred shall, within thirty (30) days after a request in writing to do so by the superintendent of schools of the other school district, issue his warrant in an amount equal to the total number of pupils attending the school from such school district multiplied by the average expenditure per pupil in the school district from which the pupils are transferred, on the maintenance fund to pay any sums due hereunder to

> the said school district wherein the said students are attending. His failure to do so shall render him liable therefor in the amount thereof on his official bond.

Id. The statute in effect during the 1987-88 and 1988-89 school years, then, required local funds to follow the transfer students. To that end, it required the district superintendent of the sending school district to request in writing that the receiving school district issue his warrant identifying the funds requested. Notably, the statute is silent as to any requirement that the parties enter into contract to memorialize the payment of transfer funds. The evidence before this Court indicates that Lauderdale did make a request in writing for the funds due and that the Enterprise District Superintendent, Michael D. Taylor, failed to issue his warrant. Exhibit L2-14 verifies that Mr. Taylor brought the alleged arrearage to the attention of the Enterprise School Board, which unanimously voted to not pay funds to Lauderdale. This Court is of the opinion that finding a forfeiture of Mr. Taylor's official bond would be inequitable under the circumstances presented here. Mr. Taylor's failure to issue the warrant was not an act of omission, but rather was an act at the direction of his school board which voted unanimously to not respond to Lauderdale's request for payment of student transfer funds. This Court is of the opinion that because the actions of the [sic] Mr. Taylor were ratified by the school board, the results of those actions should be borne by the school district.

Based on the foregoing, this Court finds that Enterprise is liable for the amount of funds due under Mississippi Code Annotated § 37-19-27 for the two school years

following expiration of the contract. The parties have presented the following formula for determining attendant funds:

> Total actual district maintenance expenditures for the academic year, less deposits of funds from state and federal sources, divided by the actual average daily attendance for all students attending the transferring school district shall constitute the "local per student share". Once the aforesaid "local per student share" has been determined, the aforesaid dollar amount shall be multiplied by the actual average daily attendance for legal transfers attending the receiving school district.

This Court is of the opinion that this formula is reasonable and is consistent with § 37-19-27 and, as a result, such will be utilized to resolve the payment of past attendant funds between Lauderdale and Enterprise. Applying the formula adopted by this Court and acknowledged by these parties by stipulation, leads to the following result:

Academic Year	Amount Owed to Lauderdale
1987-88	$ 96,731.95
1988-89	$102,237.76

On December 6, 1988 this court signed an Order staying the collection of funds relating to interdistrict transfer students due to the ongoing litigation. The Order was submitted by agreement of all parties to both suits, and was entered with the clerk of court on December 7, 1988 in both actions.

On May 30, 1989 this Court entered an order in both actions requiring interdistrict transfer applications of students to be presented to the appropriate School Board for the 1989-90 school year *in accordance with state statutes.* The May, 1989 order further stayed the collection of attendant funds relating to interdistrict transfers and preserved and reserved the claims for attendant funds for final determination by this Court.

This Court entered yet another order in both causes on March 7, 1990 requiring that interdistrict transfer applications be presented to the appropriate school boards for the 1990-91 school year *in accordance with state statutes.* That order, inter alia, continued the stay on the collection of attendant funds relating to the transfers and the preservation and reservation of any claims for attendant funds.

Although this Court entered orders staying collection of attendant funds as early as 1988 and has effectively continued that stay until the present, the parties have in no way been excused from compliance with state law. To the contrary, the latest two of the three staying orders expressly provides that all transfer applications be presented *in accordance with state statutes.* Therefore, the parties were not only bound by the applicable Mississippi Code provisions, they were directed to comply with such.

In 1989, § 37-19-27 was amended once again to read as follows:

> Legally transferred students going from one school district to another shall be counted for teacher allotment and allotments for supportive services by the school district wherein the

> pupils attend school, including cost allotments prescribed in Sections 37-19-19 and 37-19-31 for school district administrative and clerical salaries and other expenses, but shall be counted for transportation allotment purposes in the school district which furnishes or provides the transportation. The board of trustees of the school districts which approve the transfer of a student under the provisions of Section 37-15-31, *shall* enter into an agreement and contract for the payment or nonpayment of any portion of their local maintenance funds which they deem fair and equitable in support of any transferred student. Local maintenance funds shall be transferred only to the extent specified in the agreement and contract entered into by the affected school districts. The terms of any local maintenance fund payment transfer contract shall be spread upon the minutes of both of the affected school district boards of trustees. The school district accepting any transfer students shall be authorized to accept tuition from such students and such agreement may remain in effect for any length of time designated in the contract. The terms of such student transfer contracts and the amounts of any tuition charged any transfer student shall be spread upon the minutes of both the affected boards of trustees. (emphasis added)

Miss. Code Ann. § 37-19-27 (Supp. 1989). As a result of the amendment, school boards approving transfers were mandated to enter into contracts for the payment or nonpayment of any portion of their local maintenance funds which they deem fair and equitable. Lauderdale and

Enterprise entered into no such agreement and all transfers were ultimately approved by the Clarke County School Board on behalf of Enterprise.

As a result of the foregoing, this Court is of the opinion that, after 1989, the applicable Mississippi Code provisions required the parties to memorialize their transfer agreements. This Court further finds that Enterprise and Lauderdale failed to comply with this code provision, and as a result neither party was obligated to pay transfer funds to the other for the years following 1989.[10]

Lauderdale has requested this Court to award prejudgment interest on the amount found to be due it by this Court. Under Mississippi Law, prejudgment interest is generally considered to be available as an element of recovery when: (1) authorized by statute; (2) expressly provided for by contract; (3) where the amount due is liquidated when the claim is originally made; or (4) where the denial of the claim was frivolous or in bad faith. *Aetna Casualty and Surety Co. v. Doleac Electric Co.*, 471 So.2d 325 (Miss. 1985). However, the award of prejudgment interest rests in the discretion of the court and should be justified by the facts and circumstances of a particular case. *Smith v. Industrial Constructors, Inc.*, 783 F.2d 1249, 1251 (5th Cir. 1986); *Western Line Consl. Sch. Dist. v. Continental Casualty Co.*, 632 F.Supp. 295, 305

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[10] Mississippi Code Section 37-19-33 was amended in 1990 to add a provision limiting the payment of local funds to the amount of the "individual student entitlement" of § 37-22-1(2)(d), while leaving the requirement of a local maintenance fund transfer contract intact.

(N.D. Miss. 1986); *Simpson v. State Farm Fire and Casualty Co.*, 564 So. 2d 1374, 1381 (Miss. 1990). The established law of Mississippi provides for the award of prejudgment interest in actions where the amount due is liquidated when the claim is filed. *Canal Insurance Co. v. First General Ins. Co.*, 901 F.2d 45, 47 (5th Cir. 1990). The pivotal question, once a Court chooses to exercise its discretion by allowing prejudgment interest, is whether the claim is "liquidated" within the meaning of the prevailing case authority in this state. A claim is liquidated if it is "capable of being made certain by a mere calculation." *Simpson*, 564 So.2d at 1380. Similarly, interest on an unliquidated demand has been held recoverable where the amount demanded is readily ascertainable by computation. *Ellis-Jones Drug Co. v. Coker*, 125 So. 826 (Miss. 1990).

The certainty of calculation, however, is not the only factor to be considered in determining the propriety of awarding prejudgment interest. Other Mississippi decisions hold that the existence of a dispute as to liability make a claim unliquidated and prejudgment interest unrecoverable. *See Highlands Ins. Co. v. McLaughlin*, 387 So.2d 118, 121 (Miss. 1980) (affirming the denial of prejudgment interest because there was a "legitimate and justifiable dispute" between the parties); *see also Cherokee Ins. Co. v. Ellis*, 424 F.Supp. 102, 103 (S.D. Miss. 1976) (denying prejudgment interest because there was a legitimate dispute as to liability).

Lauderdale has made no claim to statutory entitlement to prejudgment interest, there was no provision for the payment of prejudgment interest in the contract between the parties, and there has been no finding by this Court of bad faith on behalf of any party. Therefore, the

only avenue of recovery of prejudgment interest is an assertion that the damages were easily calculable by the parties at the time allegedly due and that liability for the amount was not the subject of a legitimate and justifiable dispute. This Court is of the opinion that during the last two years of the contract, the amounts of the transfer funds due to Lauderdale from Enterprise were not easily calculable. The testimony at trial demonstrated that the past performance of the parties involved a cordial relationship wherein the school districts accepted the yearly request for payment and the calculation of the amount due without question. That relationship deteriorated towards the end of the contract term and eventually the payment of the amounts due under the contract ceased. Because the contract required the parties to each submit applicable statistics and figures from their school districts to be used in determining the amount of payment, when the cordial relationship between the parties failed, so did the ability to accurately determine amounts owed under the contract. Therefore, this court is of the opinion that the amounts due under the last two years of the contract were not easily calculable, so as to avail the award of prejudgment interest.

Further, this Court has found that the 1962 contract terms to which Enterprise levels charges of breach by Lauderdale (for failing to transport Meehan students and for failing to consider Enterprise input in hiring decisions at Clarkdale) were not material to the contract. This Court is of the opinion, however, that the allegations of material breach demonstrate the existence of a legitimate dispute as to liability within the meaning of *Ellis* so as to

prevent the recovery of prejudgment interest by Lauderdale. 424 F.Supp. 102 (S.D. Miss. 1976).

This Court is of the opinion that for the period following the expiration of the contract, there was a legitimate dispute as to liability for the payment of transfer funds, occasioned by the expiration of the contract. Therefore, mindful of the discretionary nature of the decision to award prejudgment interest, and based on the foregoing circumstances and authority, this Court finds that Lauderdale is not entitled to recover prejudgment interest for the years during or after the contract term.

Therefore, this Court is of the opinion that Enterprise owes a total amount of attendant funds of $302,562.30 to Lauderdale.

B. Enterprise and Quitman

The Quitman school district initiated this action against the Enterprise School District and the Clarke County Board of Education on June 17, 1988 alleging that the transfer of students from the Stonewall Area was illegal and should be enjoined. Quitman further alleged the loss of federal and state revenues to which it was entitled but denied because of the transfers. Enterprise counter-claimed seeking monies spent to educate the transfer students, while denying the illegality of their transfers.

On June 11, 1962 Enterprise and Quitman entered into a contract whereby Stonewall Area students would attend school in the Enterprise District. That contract was approved by the Educational Finance Commission of the

State of Mississippi on June 18, 1962. The parties participated under the terms of the agreement until after the 1967-1968 school year when Quitman denied the student transfer requests. On April 12, 1973 Counsel for Enterprise sent a letter to the Quitman School Superintendent requesting payment of "certain funds" which the Enterprise School Board considered due to the Enterprise School District. *see* exhibit EQ-13. Thereafter on December 14, 1973, the Enterprise Superintendent communicated to the Quitman Superintendent that Enterprise considered the 1962 contract to be valid, except as to the reference to the race of the students. *see* exhibit EQ-14. That same correspondence revealed that Enterprise had submitted an updated contract to Quitman for approval and that Enterprise solicited a proposed revised contract from Quitman. The January 9, 1974 response from the Quitman superintendent indicated that the Quitman School Board had reviewed Enterprise's communication and had taken no action. *see* exhibit EQ-15. The proposed updated contract was never executed by Quitman and, since 1968, Quitman has refused to pay Enterprise any transfer funds, maintaining the position that the transfers were illegal and the original contract was void. On June 4, 1987, Enterprise requested transfer funds for the 1985-86 academic year, on February 18, 1988 for the 1986-87 academic year; and on October 26, 1988 for 1987-88. *see* Exhibits S-42, S-43, and S-44. Beginning in December of 1988, this Court signed a series of Orders staying the collection of transfer funds and preserving and reserving all claims to attendant funds. As explained herein at pages 34-35, this Court is of the opinion that the entry of those Orders in no way relieved the parties of

their obligations and liabilities under the applicable Mississippi Code provisions.

After the December 14, 1973 demand from Enterprise and the January 9, 1974 response from Quitman, Enterprise made no further demand until June 4, 1987. During this period of more than fourteen years, Enterprise never initiated suit on the debt which it alleged to be due from Quitman. Therefore, this Court is of the opinion that Enterprise is equitably estopped from seeking and recovering funds prior to the 1987-1988 school year. In addition to Enterprise's being equitably estopped from collecting funds prior to the 1987-88 academic year, no provision under Mississippi law existed to require the transfer of such attendant funds. Prior to 1987-88, no statutory provision existed requiring the payment of transfer funds between districts within the same county. *See* Miss. Code Ann. § 37-19-27 (1972) and its predecessor § 37-19-33. Statutory authority for payment of transfer funds between districts within the same county did not go into effect until July 1, 1987, and was effective only for the school years 1987-88 and 1988-89. *See* Miss. Code Ann. § 37-19-278 (Supp. 1987 and 1989).

In 1989,[11] § 37-19-27 was amended to require school boards approving transfers to enter into contracts for the payment or non-payment of any portion of their local maintenance funds which they deem fair and equitable. Enterprise and Quitman entered into no such agreement.

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[11] The discussion of this Court's orders staying collection of attendant funds and preserving and reserving claims is incorporated by reference from pages 34-35 of this opinion.

As a result of the foregoing, this Court is of the opinion that, after 1989, the applicable Mississippi Code provisions required the parties to memorialize their transfer agreements. This Court further finds that Enterprise and Quitman failed to comply with this code provision, and as a result neither party was obligated to pay transfer funds to the other for the years following 1989.

Based on the foregoing, this Court is of the opinion that Quitman is obligated to pay to Enterprise student transfer funds for the school years 1987-88 and 1988-89, and for no years thereafter.

Using the formula which this Court has found to be reasonable and consistent with the Mississippi Code provisions, set out at page [sic] 33-34 of this Opinion, the Court finds as follows:

1987-88 Academic Year

Multiplying the average daily attendance for legal transfers attending Quitman, 261.01 (Quitman ADA to Enterprise) by the local per student share of $313.58 equals:. . . . .$81,847.52.

That amount must be reduced by the average daily attendance for legal transfers attending Enterprise, 2.0 (Enterprise ADA to Quitman) multiplied by the local per student share of $412.76, which equals the amount of: $825.52.

The result is a Balance Due to Enterprise for the school year 1987-88 of:. . . . . .$81,022.00.

1988-89 Academic Year

Multiplying the average daily attendance for legal transfers attending Quitman, 297.14[12] (Quitman ADA to Enterprise) by the local per student share of $422.13 equals: . . .$125,431.71.

That amount must be reduced by the average daily attendance for legal transfers attending Enterprise, 2.0[13] (Enterprise ADA to Quitman) multiplied by the local per student share of $428.40, which equals the amount of: . . . . . .$856.80.

The result is a balance due to Enterprise for the school year 1988-89 of: . . . . . .$124,574.91.

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[12] The figures basing this Court's finding of local per student share in both school districts were presented to this Court in Exhibit EQ-7 and are based on Public School Enrollment Statistics prepared by the Mississippi Bureau of Management Information Systems, Statistics Office. *See* Exhibit EQ-6. The testimony at trial revealed that the Enterprise expert relied on these statistics in creating exhibit EQ-7. This Court is of the opinion that the figures provided therein are accurate and will base the formulation of attendant funds between Enterprise and Quitman.

[13] This average daily attendance figure is available only to the school district keeping attendance records of students. Because Quitman did not submit any figures which it contends to be the average daily attendance of Enterprise students attending Quitman for the academic years in question, this Court has no direct evidence on which to base a finding. However, throughout the proceeding counsel for the parties have represented that number of students in average daily attendance at Quitman from Enterprise in nominal, and has never exceeded two. Therefore, in an abundance of caution, this Court finds that the figure is two.

Based on the foregoing, this Court is of the opinion that Quitman owes a total amount of attendant funds of $205,596.91 to Enterprise.

Applying the analysis set out herein at pages 35-38, regarding the availability of prejudgment interest, this Court concludes that Enterprise had made no claim to statutory entitlement to prejudgment interest, there was no contractual provision for prejudgment interest, and there has been no finding by this Court of bad faith on behalf of any party. Therefore, the only avenue of recovery of prejudgment interest is an assertion that the damages were easily calculable by the parties at the time allegedly due and that liability for the amount was not the subject of a legitimate and justifiable dispute. This Court is of the opinion that liability for the amount was the subject of a legitimate and justifiable dispute. Upon consideration of the discretionary nature of the decision to award prejudgment interest, and considering the foregoing, this Court is of the opinion that such is not available in this action.

During the trial of this matter Quitman generated a student locator map, found at Exhibit EQ-18. The Court, during the trial made such available for use by all parties, reserving its ruling on payment for the cost of its preparation. This Court is of the opinion that Quitman shall be credited for one-half of the cost of preparing the map, against the judgment herein.

CONCLUSION

Based on the foregoing opinion, this Court directs the parties to comply with the student assignment provisions as set out herein.

This Court further directs the parties in Civil Action number E88-0059(L) to submit a judgment awarding payment from Enterprise to Lauderdale in the amount of $302,562.30. In order to reduce the impact of such a sizable award on the Enterprise School District, this Court directs that the judgment shall provide that no more than one-third of the total award shall be collectable by Lauderdale within a one year period.

This Court directs the parties in Civil Action number E88-0065(L) to submit a judgment awarding payment from Quitman to Lauderdale in the amount of $205,596.91. In this action, similar to its counterpart, the Court desires to minimize the impact of such a sizable award on the school district. Therefore, the Court directs that the judgment shall provide that no more than one-third of the total award shall be collectable by Enterprise from Quitman within a one year period.

This decision concludes one of the most difficult cases in which this Court has ever been involved. It was rendered so because another Federal Court edict regarding the operation of these school districts is in no one's best interest. In retrospect, the Court regrets the time taken attempting to resolve this action among the various parties. But if ever a case cried out for compromise, it was these two consolidated matters.

All parties, with the Court's assistance, did everything possible to reach an agreed solution. Unfortunately, it was not to be. Positions harden over long periods of time. Many of the disputes in this case date back 25 to 30 years before this action was filed. Further, the repeated attempts to assimilate accurate and complete information regarding the residences and other critical data concerning the students residing in these three districts proved to be extremely time consuming.

There are no winners in this case. All parties have prevailed on some issues and lost on others. Accordingly, each party shall bear its own cost. Further, this Court shall maintain jurisdiction of this matter pending implementation of this Opinion.

It is hoped that all three school districts involved in this litigation can move forward from this point with a new spirit of cooperation. This is critical to the real parties in interest in this litigation – the children residing in these three school districts.

Orders of Judgment conforming with this opinion, approved by all parties as to form, shall be submitted to the Court within ten days.

THIS THE 29th DAY OF MAY, 1992.

/s/ John M. Roper
UNITED STATES
MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

THE LAUDERDALE COUNTY SCHOOL DISTRICT, BY AND THROUGH ITS BOARD OF EDUCATION, JOHN L. KNIGHT, GLORIS COOPER, TOMMY S. GUNN, WANDA MCPHAIL, AND ARNOLD M. THREAT — PLAINTIFFS

VERSUS — CIVIL ACTION NO. E88-0059(L)

ENTERPRISE SCHOOL DISTRICT, BY AND THROUGH ITS BOARD OF TRUSTEES, ET AL — DEFENDANTS

CONSOLIDATED WITH:

QUITMAN SCHOOL DISTRICT, BY AND THROUGH ITS BOARD OF TRUSTEES — PLAINTIFF

VERSUS — CIVIL ACTION NO. E88-0065(L)

ENTERPRISE SCHOOL DISTRICT, BY AND THROUGH ITS BOARD OF TRUSTEES, AND THE CLARKE COUNTY BOARD OF EDUCATION BY AND THROUGH ITS BOARD OF TRUSTEES — DEFENDANTS

ORDER

(Filed July 10, 1992)

This matter is before the Court, *sua sponte*, to correct clerical errors in an Opinion recently entered in the above styled actions, pursuant to Federal Rule 60(a).

On May 29, 1992, this Court signed, and on June 1, 1992 the clerk of court entered, a final Opinion in these consolidated actions. Upon further review, this Court amends the final Opinion as follows:

1. Page 11, first line – the last word shall be corrected to read "Northeast Clarke County", rather than "Northeast Clarkdale".

2. Page 12, top line – the word "in" shall be deleted.

3. Page 12, fifth line – the percentage shall now read "74:26 white to black student population".

4. Page 21, footnote 6 – the last portion of the second sentence, which states "as well as students transferred pursuant to § 37-15-29(2) Mississippi Code Annotated (children of employees)" shall be deleted.

The sentence shall now read "Further, financial payments should also include amounts for black transfer students."

5. Page 23, beginning on line 13 – the sentence "On February 13, 1962 Lauderdale and Enterprise entered into a contract whereby the students residing within the Northeast Clarke County area of the Enterprise School District were assigned and transferred for attendance at the Clarkdale Attendance Center of the Lauderdale School District, [fn.7] and those students residing within the Meehan area of the Lauderdale County School District, who desired to attend Enterprise, were allowed to transfer there." shall be corrected to read:

On February 13, 1962, Lauderdale and Enterprise entered into a contract whereby

the students residing within the Northeast Clarke County area of the Enterprise School District were assigned and transferred for attendance at the Clarkdale Attendance Center of the Lauderdale School District, [fn.7] and those students residing within the Meehan area of Lauderdale County were assigned and transferred for attendance at the Enterprise Attendance Center.

6. Page 23, footnote 7 – the entire last sentence of footnote 7 shall be deleted.

7. Page 47, first line – the first word, "Lauderdale" shall be corrected to read "Enterprise".

SO ORDERED AND ADJUDGED, this the 9th day of July, 1992.

/s/ John M. Roper
UNITED STATES
MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

THE LAUDERDALE COUNTY SCHOOL DISTRICT, BY AND THROUGH ITS BOARD OF EDUCATION, JOHN L. KNIGHT, GLORIS COOPER, TOMMY S. GUNN, WANDA MCPHAIL, AND ARNOLD M. THREAT — PLAINTIFFS

VS. — CIVIL ACTION NO. E88-0059(L)

ENTERPRISE SCHOOL DISTRICT, BY AND THROUGH ITS BOARD OF TRUSTEES, ET AL. — DEFENDANTS

Consolidated With

QUITMAN SCHOOL DISTRICT, BY AND THROUGH ITS BOARD OF TRUSTEES — PLAINTIFFS

VS. — CIVIL ACTION NO. E88-0065(L)

ENTERPRISE SCHOOL DISTRICT, BY AND THROUGH ITS BOARD OF TRUSTEES, AND THE CLARKE COUNTY BOARD OF EDUCATION, BY AND THROUGH ITS BOARD OF TRUSTEES — DEFENDANTS

JUDGMENT

(Filed July 10, 1992)

This action having come on for hearing before the Court, Honorable John H. Roper, United States Magistrate Judge presiding; the issues having been duly tried

and opinions containing findings of fact and conclusions of law having been duly entered on July 5, 1991, and June 1, 1992, which opinions are adopted by reference; it is therefore,

ORDERED AND ADJUDGED that:

1. The Stonewall territory, be and is hereby deemed to be a part of and subject to the jurisdiction of the Quitman School District.

2. The geographic area of Clarke County, as defined in the written agreement made in February 1962 between Enterprise and Lauderdale, containing Clarke County students is a part of and subject to the jurisdiction of the Enterprise School District.

3. The students residing in Northeast Clarke County who attend Clarkdale School are transfer students.

4. The Court adopts the following plan to identify which students residing in the Stonewall area will be allowed to continue to attend the Enterprise School District and which students may be refused transfer by Quitman:

A. All white Stonewall area students enrolled in the Enterprise School District during the 1991-1992 school year in grades K, 1, 2, 3, 4, 5, 6, 7, 8, and 9 will attend the Quitman School District beginning with the 1992-1993 school year unless a transfer request is approved by the Quitman and Enterprise School Boards in accordance with state law.

B. All white Stonewall area students who will enter kindergarten beginning with the 1992-1993

school year will attend the Quitman School District unless a transfer request is approved by the Quitman and Enterprise School Boards in accordance with state law.

C. Any white Stonewall area students who were not enrolled in the Enterprise School District during the 1991-1992 school year will continue/begin to attend the Quitman School District during the 1992-1993 school year unless a transfer request is approved by the Quitman and Enterprise School Boards in accordance with state law.

D. Beginning with the 1992-1993 school year a minimum of 100 and a maximum of 125 black Stonewall area students will be allowed to transfer to the Enterprise School District. Specifically, the Quitman and Enterprise School Boards must allow *all* requests for transfer by black students up to 125. If less than 100 black students request transfer to Enterprise, then the minimum number of 100 shall be assigned by Quitman to attend Enterprise, utilizing the criteria set forth herein below. If a number greater than 125 request transfer to Enterprise, then Quitman shall use the criteria set forth herein to determine which of the students will be in the group of 125 transferred to Enterprise.

Only those white Stonewall area students who were enrolled in the Enterprise School District during the 1991-1992 school year in grades 10, 11, and 12 will be allowed to enroll in the Enterprise School District for the 1992-1993 school year, absent a valid transfer.

E. Complete phasing out of the white Stonewall area students will occur as the white students who were enrolled in the Enterprise

School District in grades 11 and 12 graduate from the Enterprise School District. The phasing out process can be described as follows:

School Year 1992-1993

All white Stonewall area students who were enrolled in the Enterprise School District in grades K, 1, 2, 3, 4, 5, 6, 7, 8, and 9 during the 1991-1992 school year will attend the Quitman School District beginning with the 1992-1993 school year, absent a valid transfer approved by both school boards.

A minimum of 100 and a maximum of 125 black Stonewall Area students will be allowed to attend the Enterprise School District during the 1992-1993 School Year, upon request for transfer. If necessary, selection of the black students will be made on specified criteria, as follows:

1. Proximity of student's residence to the Enterprise School District.
2. Grade level of student.
3. Length of student's enrollment in the Enterprise School District.
4. Brothers and sisters enrolled in the Enterprise School District.

White Stonewall area students who were enrolled in the Enterprise School District in grades 10, 11, and 12 during the 1991-1992 school year will be allowed to continue to attend in the Enterprise School District in grades 11 and 12 during the 1992-1993 school year.

School Year 1993-1994

All white Stonewall area students in grades K, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 will attend the Quitman School District during the 1993-1994 school year, absent a valid transfer.

A minimum of 100 and a maximum of 125 black Stonewall area students will be allowed to attend the Enterprise School District during the 1993-1994 school year, upon request for transfer. If necessary, selection of the black students will be made on specified criteria, as follows:

1. Proximity of student's residence to the Enterprise School District.

2. Grade level of student.

3. Length of student's enrollment in the Enterprise School District.

4. Brothers and sisters enrolled in the Enterprise School District.

White Stonewall area students who were enrolled in the Enterprise School District during the 1992-1993 school year in grades 11 and 12 and who also met the 1991-1992 enrollment criteria will be allowed to attend Enterprise School District in grade 12 during the 1993-1994 school year.

School Year 1994-1995

All White Stonewall area students in grades K, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 will attend the Quitman School District during

the 1994-1995 school year, absent a valid transfer.

A minimum of 100 and a maximum of 125 black Stonewall area students will be allowed to attend the Enterprise School District during the 1994-1995 school year, upon request for transfer. If necessary, selection of the black students will be made on specified criteria, as follows:

1. Proximity of student's residence to the Enterprise School District.

2. Grade level of student.

3. Length of student's enrollment in the Enterprise School District.

4. Brothers and sisters enrolled in the Enterprise School District.

F. Financial payments of specified local revenue in a reasonable amount, to be determined by the two school districts, will be paid by the Quitman School District during the transition years, and thereafter as follows:

School Year 1992-1993

Payment will be made for eligible white Stonewall area students in grades 11 and 12 only and for a minimum of 100 and a maximum of 125 black Stonewall area students, depending upon the number of requested transfers.

School Year 1993-1994

Payment will be made for eligible white Stonewall area students in grade 12 only and for a minimum of 100 and a maximum of 125 black Stonewall area students, depending upon the number of requested transfers.

School Year 1994-1995 and thereafter

Payment will be made for a minimum of 100 and a maximum of 125 black Stonewall area students, depending on the number of requested transfers.

5. The Court adopts the following plan to identify which of the students residing in the Northeast portion of Clarke County will be allowed to continue to attend the Clarkdale Attendance Center and which students may be refused transfer by Enterprise:

A. All black students who reside in Northeast Clarke County and who currently attend the Clarkdale School will be allowed to continue attending the Clarkdale School, upon request for transfer.

B. All white Northeast Clarke County students enrolled in the Clarkdale School District during the 1991-1992 school year in grades K, 1, 2, 3, 4, 5, 6, 7, 8, and 9 will attend school in the Enterprise School District beginning with the 1992-1993 school year unless a transfer request, as described herein below, is approved by the Lauderdale and Enterprise School Boards in accordance with state law.

C. All white Northeast Clarke County students who will enter kindergarten beginning with the 1992-1993 school year will attend the Enterprise School District, unless a transfer request is approved by the Enterprise and Lauderdale School Boards in accordance with state law.

D. Any white Northeast Clarke County students who were not enrolled in the Clarkdale School during the 1991-1992 school year will continue/begin to attend the Enterprise School District during the 1992-1993 school year, unless a transfer request is approved by the Enterprise and Lauderdale School Boards in accordance with state law.

E. Beginning with the 1992-1993 school year a maximum of 125 white Northeast Clarke County students shall be allowed to continue attending the Clarkdale School by transfer approval. Selection of those students will be made on specified criteria, as follows:

1. Proximity of student's residence to the Clarkdale School.

2. Distance of the student's residence from the Enterprise School District.

3. Grade level of student.

4. Length of student's enrollment in the Clarkdale School.

5. Brothers and sisters enrolled in the Clarkdale School.

F. The remainder of the white Northeast Clarke County students, enrolled in, or seeking enrollment in, Clarkdale will be phased out as follows:

School Year 1992-1993

Only those white Northeast Clarke County students who were enrolled in the Clarkdale School during the 1991-1992 school year in grades 10, 11, and 12 will be allowed to enroll at the Clarkdale School for the 1992-1993 school year.

All white Northeast Clarke County students who were enrolled in the Clarkdale School in grades K, 1, 2, 3, 4, 5, 6, 7, 8, and 9 during the 1991-1992 school year will attend the Enterprise School District beginning with the 1992-1993 school year, absent a valid transfer approved by both school boards, however:

A maximum of 125 white Northeast Clarke County students, in grades 1 through 10 will be assigned to attend the Clarkdale School during the 1992-1993 School Year, upon request for transfer. Selection of those students will be made on specified criteria, as follows:

1. Proximity of student's residence to the Clarkdale School.

2. Distance of the student's residence from the Enterprise School District.

3. Grade level of student.

4. Length of student's enrollment in the Clarkdale School.

5. Brothers and sisters enrolled in the Clarkdale School.

School Year 1993-1994

All white Northeast Clarke County students in grades K, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 will attend the Enterprise School District during the 1993-1994 school year, absent a valid transfer approved by both school boards, however:

A maximum of 125 white Northeast Clarke County students, in grades 1 through 11 will be allowed to attend the Clarkdale School during the 1993-1994 school year, upon request for transfer. Selection of those students will be made on specified criteria, as follows:

1. Proximity of student's residence to the Clarkdale School.

2. Distance of the student's residence from the Enterprise School District.

3. Grade level of student.

4. Length of student's enrollment in the Clarkdale School.

5. Brothers and sisters enrolled in the Clarkdale School.

White Northeast Clarke County students who were enrolled in the Clarkdale School during the 1992-1993 school year in grades 11 and 12 and who also met the 1991-1992 enrollment criteria will be allowed to attend Clarkdale School in grade 12 during the 1993-1994 school year.

School Year 1994-1995

All white Northeast Clarke County students in grades K, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 will attend the Enterprise School District during the 1994-1995 school year, absent a valid transfer approved by both school boards, however:

A maximum of 125 white Northeast Clarke County students will be allowed to attend the Clarkdale School during the 1994-1995 school year, upon request for transfer. Selection of those students will be made on specified criteria, as follows:

1. Proximity of student's residence to the Clarkdale School.

2. Distance of the student's residence from the Enterprise School District.

3. Grade level of student.

4. Length of student's enrollment in the Clarkdale School.

5. Brothers and sisters enrolled in the Clarkdale School.

G. Financial payments of specified local revenue in a reasonable amount, to be determined by the school districts, will be paid by the Enterprise School District during the transition years as follows:

School Year 1992-1993

Payment will be made for those eligible white Northeast Clarke County transfer students in grades 11 and 12 only; and for a

maximum of 125 white Northeast Clarke County transfer students depending upon the number of requested transfers. Payment will also be made for black transfer students.

School Year 1993-1994

Payment will be made for those eligible Northeast Clarke County transfer students in grade 12 only; and for a maximum of 125 white North Clarke County transfer students, depending upon the number of requested transfers. Payment will also be made for black transfer students.

School Year 1994-1995 and thereafter

Payment will be made for a maximum of 125 white Northeast Clarke County transfer students, depending upon the number of requested transfers. Payment will also be made for black transfer students.

In the event that the school districts are unable to reach agreement on the amount of financial payment due annually for transfer students, the amount will be determined by the Court.

Lauderdale be and hereby is granted judgment from and of Enterprise in the amount of $302,562.30 with interest thereon as provided by law. No more than one-third of the total award shall be collectible by Lauderdale within a one year period.

Enterprise be and hereby is granted judgment from and of Quitman in the amount of $205,596.91 with interest thereon as provided by law. No more than one-third of the total award shall be collectible by Enterprise from Quitman within a one year period.

Quitman shall be credited for one half of the cost of preparing the map, against the judgment herein.

Each party shall bear its own cost.

This Court shall maintain jurisdiction of this matter pending implementation of this Judgment.

Any and all other claims for monetary, declaratory, or injunctive relief be and the same are hereby dismissed with prejudice.

The Clarke County Board of Education has ceased to exist, and all claims against said Board are hereby dismissed.

SO ORDERED this the 9th day of July, 1992.

/s/ John M. Roper
UNITED STATES
MAGISTRATE JUDGE

APPROVED AS TO FORM:

/s/ Robert F. Compton
ATTORNEY FOR THE LAUDERDALE
COUNTY SCHOOL DISTRICT, ET AL.

/s/ James A. Keith
ATTORNEY FOR QUITMAN
SCHOOL DISTRICT, ET AL.

/s/ Robert E. Covington, Jr.
ATTORNEY FOR ENTERPRISE SCHOOL DISTRICT, ET AL.; AS WELL AS USF&G

/s/ Ben J. Piazza, Jr.
BEN J. PIAZZA, JR.,
ATTORNEY FOR CONCERNED CITIZENS

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7501

D.C. Docket No. ECE88 0059 L c/w
CAE 88 0065 L

THE LAUDERDALE COUNTY SCHOOL DISTRICT, by and through its Board of Education, JOHN L. KNIGHT, WANDA McPHAIL and ARNOLD M. THREAT,

Plaintiffs-Appellees
Cross-Appellants,

versus

ENTERPRISE CONSOLIDATED SCHOOL DISTRICT by and through its Board of Education,

Defendant-Appellant
Cross-Appellee.

* * *

QUITMAN CONSOLIDATED SCHOOL DISTRICT,

Plaintiff-Appellant
Cross-Appellee,

versus

ENTERPRISE CONSOLIDATED SCHOOL DISTRICT,

Defendant-Appellee
Cross-Appellant.

Appeals from the United States District Court for the Southern District of Mississippi

Before WOOD[1], SMITH and DUHÉ, Circuit Judges.

JUDGMENT

(Filed June 16, 1994)

This cause came on to be heard on the record on appeal and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the magistrate judge's order transferring students from Northeastern Clarke County to Clarkdale and from Stonewall to Quitman is reversed. In all other respects, the judgment of the District Court is affirmed; and the cause is remanded to the District Court for further proceedings in accordance with the opinion of this Court.

IT IS FURTHER ORDERED that each party bear its own costs on appeal.

ISSUED AS MANDATE:

[1] Circuit Judge of the Seventh Circuit sitting by designation.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

THE LAUDERDALE COUNTY SCHOOL DISTRICT, BY AND THROUGH ITS BOARD OF EDUCATION, JOHN L. KNIGHT, GLORIS COOPER, TOMMY S. GUNN, WANDA MCPHALL AND ARNOLD M. THREAT — PLAINTIFFS

VS. — CIVIL ACTION NO. E88-0059(L)

ENTERPRISE SCHOOL DISTRICT, BY AND THROUGH ITS BOARD OF TRUSTEES, ET AL.

VS. — DEFENDANTS

CONCERNED CITIZENS OF NORTH CLARKE COUNTY — PLAINTIFFS IN INTERVENTION

Consolidated With

QUITMAN SCHOOL DISTRICT, BY AND THROUGH ITS BOARD OF TRUSTEES — PLAINTIFFS

VS. — CIVIL ACTION NO. E88-0065(L)

ENTERPRISE SCHOOL DISTRICT, BY AND THROUGH ITS BOARD OF TRUSTEES, AND THE CLARKE COUNTY BOARD OF EDUCATION BY AND THROUGH ITS BOARD OF TRUSTEES — DEFENDANTS

CONCERNED CITIZENS OF NORTH CLARKE COUNTY — PLAINTIFFS IN INTERVENTION

ORDER

(Filed Aug. 15, 1994)

On June 16, 1994, the Fifth Circuit Court of Appeals rendered its decision affirming in part and reversing in part the Final Judgment of July 10, 1992, of the United States District Court for the Southern District of Mississippi, and remanded the case to this Court for action consistent with that opinion. Pursuant to, and consistent with that opinion, this Order is entered.

IT IS HEREBY ORDERED THAT:

1. The area referred to in this litigation as the Stonewall Area, comprised of 21 sections of land and described as

> Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 16, 17 and 18 in Township 3 North, and Sections 27, 28, 29, 31, 32, 33, 34, and 36 in Township 4 North, all in Range 15 East.

is within the Quitman School District.

2. All students residing within the Stonewall Area or other areas within the Quitman School District who have attended school in the Enterprise School District will not be allowed to attend school in the Enterprise School District for the academic year 1994-95 and all future years, unless a legal transfer is made pursuant to the laws of the State of Mississippi and only if the transfer does not violate the "Singleton provision" of the applicable desegregation orders governing these parties.

3. The area referred to in this litigation as the Northeast Clarke County Area, as defined in the Clarkdale agreement of February 1962, is within the Enterprise School District.

4. All students residing within the Northeast Clarke County Area or other areas within the Enterprise School District who have attended school in the Lauderdale School District will not be allowed to attend school in the Lauderdale School District for the academic year 1994-95 and all future years, unless a legal transfer is made pursuant to the laws of the State of Mississippi and only if the transfer does not violate the "Singleton provision" of the applicable desegregation orders governing these parties.

5. Quitman School District is to pay Enterprise School District the sum of $205,596.91 for those Stonewall Area students who attended Enterprise School District for the academic years 1987-89. The Court has been informed that Quitman School District has paid two of three installments of this sum with the third installment to be paid in August 1994.

6. Enterprise School District is to pay to Lauderdale School District the sum of $302,562.30 for those Northeast Clarke County Area students who attended Lauderdale School District for the academic years 1985-89. The Court has been informed that Enterprise School District has paid two payments on this sum with the third installment to be paid in August 1994.

7. Quitman School District is to make a reasonable payment to Enterprise School District for the Court-ordered transfers from Quitman School District to Enterprise School District for the academic years 1992-94. The parties shall have reviewed all student data necessary to negotiate a reasonable payment by August 31, 1994.

8. Enterprise School District is to make a reasonable payment to Lauderdale School District for the Court-ordered transfers from Enterprise School District to Lauderdale School District for the academic years 1992-94. The parties shall have reviewed all student data necessary to negotiate a reasonable payment by August 31, 1994.

9. The Court determines that MISS. CODE ANN. § 37-15-29(4) should not be applied regarding transfers between Enterprise School District, Lauderdale School District and Quitman School District.

10. The Court determines that MISS. CODE ANN. § 37-15-29(2) applies to teachers aides. Unless otherwise approved by the Court, the Court determines that teachers aides will consist of one aide per class in kindergarten through third grade. The Court determines that MISS. CODE ANN. § 37-15-29(3) should be applied to transfers between Enterprise School District, Lauderdale School District and Quitman School District.

11. Within fifteen (15) days of the signing of this Order, Lauderdale, Enterprise and Quitman School Districts are to prepare lists of students attending the respective school within each district as a whole except Lauderdale School District is to provide a list of students for the Clarkdale School only. In addition, each district is to provide lists which identify students falling within the exception under provisions of MISS. CODE ANN. § 37-15-29(2) and (3) and any inter-district students attending the respective schools who do not fall under the aforementioned exceptions.

12. If the Court determines that any student attending Lauderdale, Enterprise and/or Quitman School Districts do not fall under the aforementioned exceptions, the Court may impose sanctions which include the removal of the student from the affected school and the additional monetary sanction of the cost of a transferring student for one year. This sanction will create a reduction in the amount owed by Quitman School District to Enterprise School District and/or by Enterprise School District to Lauderdale School District as set forth in paragraphs 5 and 6 of this Order.

13. The subject matter of the November 16, 1992, Order is moot as a result of the Fifth Circuit Opinion and by this Order, Quitman School District's November 30, 1992, Rule 59(e) Motion to Alter or Amend this Court's post-judgment Order of November 16, 1992, is denied.

14. On or prior to August 19, 1994, each district is to write each student affected by this Order. The letter shall inform the student where they are to attend school for the upcoming academic year and include a copy of this Order.

15. Each party is to bear its own costs and attorney's fees.

SO ORDERED THIS THE 15th DAY OF AUGUST, 1994.

/s/ John M. Roper
UNITED STATES
MAGISTRATE JUDGE

AGREEMENT BETWEEN THE LAUDERDALE COUNTY BOARD OF EDUCATION AND THE BOARD OF TRUSTEES OF THE CLARKE COUNTY CONSOLIDATED SCHOOL DISTRICT WITH REFERENCE TO THE CONSTRUCTION, ERECTION, MAINTENANCE AND OPERATION OF CLARKDALE ATTENDANCE CENTER, AND OTHER RELATED SCHOOL MATTERS.

This agreement made and entered into, in quadruplicate, on this the 13th day of February, 1962, by and between the Board of Education of Lauderdale County, Mississippi, hereinafter called Party of the First Part, and the Board of Trustees of the Clarke County Consolidated School District of Clarke County, Mississippi, hereinafter called Party of the Second Part,

WITNESSETH:

WHEREAS, heretofore pursuant to the provisions of Chapter 12, General Laws of Mississippi, 1953 Extraordinary Session, the public schools of Lauderdale County, Mississippi, outside of the Meridian Municipal Separate School District, were reorganized into a County Unit District, and the State Educational Finance Commission of the State of Mississippi has approved said reorganization, and the said District is under the supervision of the Party of the First Part; and,

WHEREAS, heretofore pursuant to the provisions of Chapter 12, General Laws of Mississippi, 1953 Extraordinary Session, the schools of Clarke County, Mississippi, were reorganized into two consolidated districts, one of which is known as the Clarke County Consolidated School District, and the State Educational Finance Commission of the State of Mississippi has approved the

aforesaid reorganization, and said District is under the supervision of the Party of the Second Part; and

WHEREAS, prior to the reorganization of the aforesaid school districts there was in operation a consolidated line school district embracing territory in both Clarke County and Lauderdale County, known as the Clarkdale Consolidated School District, which District was abolished by the aforesaid reorganization; and,

WHEREAS, the said Clarkdale Consolidated School District owned and operated a white attendance center, with grades one through twelve, known as "Clarkdale" which was located in such a manner that approximately one-half of the main building and one-half of the campus was situated in Clarke County and the other one-half of said main building and campus was situated in Lauderdale County; and,

WHEREAS, after the aforesaid reorganizations, the said Clarkdale Attendance Center, together with all related facilities, has been operated jointly, as a white attendance center, with grades one through twelve, by the Party of the First Part and the Party of the Second Part for children residing within parts of said reorganized districts under a written contract on a year to year basis; and,

WHEREAS, the aforesaid Clarkdale Attendance Center and related school facilities is located in such a manner that it is now partly within the Lauderdale County School District and partly within the Clarke County Consolidated School District; and,

WHEREAS, approximately one hundred students who reside within the Lauderdale County School District are presently attending the Enterprise Attendance Center within the Clarke County Consolidated School District on a transfer basis; and,

WHEREAS, approximately two hundred students who reside within the Clarke County Consolidated School District are presently attending the aforesaid Clarkdale Attendance Center; and,

WHEREAS, both the Party of the First Part and the Party of the Second Part are desirous of obtaining and furnishing the best possible school facilities, educational opportunities and educational advantages for the school children of both districts; and,

WHEREAS, it has been found and determined both both [sic] of said Parties that from the standpoint of transportation, the efficiency of operating schools and other pertinent considerations, the facilities, educational opportunities, educational advantages and general welfare of the school children of both of said districts can be more efficiently provided, furnished, operated and maintained by the cooperative efforts of said school districts in the manner and to the extent hereinafter provided.

NOW, THEREFORE, PREMISES CONSIDERED, it is agreed by and between the Party of the First Part and the Party of the Second Part that said two school districts shall join, unite and cooperate in the construction, erection, repairing, renovating, equipping and maintaining of the buildings and related school facilities at the Clarkdale Attendance Center for the education of such or so many

of the white school children of each of said school districts as is hereinafter provided, and to operate and maintain the said school and related school facilities as provided for by Chapter 266 General Laws of Mississippi, 1956 Regular Session, as amended, and other applicable statutes, and upon the following terms and conditions, to-wit:

I

That the site of the school, school buildings and other related school facilities shall be and remain at the present location of the Clarkdale Attendance Center, on the west side of U. S. Highway Number 45 on the line between Lauderdale County and Clarke County and said school shall continue to be known as the "Clarkdale Attendance Center".

II

That except as is otherwise provided herein, the Part of the First Part shall, during the term of this agreement, operate, manage, govern, supervise and control the buildings and related school facilities, now comprising the Clarkdale Attendance Center, together with all buildings and related school facilities which may hereafter be constructed, erected and equipped at said Attendance Center, in the same manner and to the same extent as if said school were a regular school of said Lauderdale County School District. Provided however, that in the event the Party of the Second Part shall at any time during the term of this agreement acquire a fifty-one-per cent (51%) or greater ownership interest in the land, buildings, and

related school facilities comprising the said Clarkdale Attendance Center, as defined in Paragraph IV hereof, then the Party of the Second Part shall thereafter operate, manage, govern, supervise and control said buildings and facilities in the same manner and to the same extent as if said school were a regular school of said Clarke County Consolidated School District, subject to the same provisions and with the same privileges and responsibilities, as are provided herein for the operation of said Attendance Center by the Lauderdale County School District.

III

The Party of the First Part shall annually submit to the Party of the Second Part a written list of the principal and of the teachers proposed to be employed for the Clarkdale Attendance Center at least thirty days prior to the date that such principal or teachers are proposed to be approved by the said Party of the First Part. If the Party of the Second Part objects to the hiring of either the principal or any of the teachers proposed by the Party of the First Part for Clarkdale Attendance Center, then said Party of the Second Part shall submit to the Lauderdale County Superintendent of Education, on or before the time proposed for approving said principal and/or teachers, its objection to the employment of such proposed principal and/or teachers in written form specifying why it is so opposed. If no written objection is filed by the Party of the Second Part as herein provided, then the Party of the First Part shall proceed with the approval of the list of principal and/or teachers previously submitted aforesaid. In the event a written objection is filed as

herein provided and the Party of the First Part does not find said objection to be a valid one, then in that event the question of whether or not said principal and/or teacher shall be employed shall be submitted to a committee composed of three superintendents who are neither residents nor employees of either Lauderdale County or Clarke County, to be chosen by the Chairman of the Mississippi Accrediting Commission, or his successor; and both districts agree to be bound by the written decision of a majority of said committee. The Party of the First Part shall have the right to fill vacancies in said positions for the remainder of the current scholastic year without complying with the foregoing.

IV

The ownership of land, buildings, equipment and related school facilities shall be as follows: The same shall be owned jointly by Lauderdale County Board of Education and Board of Trustees of the Clarke County Consolidated School District, and the ownership thereof shall be proportion to the amount contributed heretofore by Lauderdale County and Clarke County and/or their respective citizens, plus the amount to be hereafter contributed by the Lauderdale County School District and the Clarke County Consolidated School District. In determining proportionate ownership of said property, each party shall receive credit for state funds allocated to either district for building purposes based on average daily attendance at Clarkdale Attendance Center of students residing in the respective districts, but state building funds allocated to the Clarke County Consolidated School District based on average daily attendance of

Lauderdale County students attending other attendance centers in the Clarke County School District shall be deducted from such ownership credit earned by the Party of the Second Part.

V

All expenditures from funds derived from the sale of bonds, state building funds, or other funds available to the Party of the First Part for capital outlay for the construction, erection, repairing, renovating and equipping of school buildings and related school facilities at Clarkdale Attendance Center shall be in accordance with plans, specifications and conditions as desired and determined by the Party of the First Part and shall be contracted for and paid for by the Party of the First Part.

VI

The Party of the Second Part shall provide, as soon as funds become available to said party, either from bond issue, state building funds, or other funds, a proportionate part of such funds for the construction, erection, repairing, renovating and equipping of school buildings and related school facilities at the Clarkdale Attendance Center, which proportionate part shall be determined as follows: The "per student share" of such funds shall first be determined by dividing the total of such funds available by the total number of resident Clarke County Consolidated School District students in average daily attendance in any attendance center during the last completed scholastic year. The proportionate part of such funds to be provided for such purposes shall then be

determined by subtracting the total number of resident Lauderdale County students in average daily attendance in the Clarke County Consolidated School District during the same scholastic year from the total number of resident Clarke County Consolidated School District students in average daily attendance in the Lauderdale County School District during the same scholastic year and multiplying the difference by the above defined "per student share" of such funds. Such proportionate part of such funds shall be delivered to the Party of the First Part to be expended in such manner as the Party of the First Part shall see fit.

VII

The Clarkdale Attendance Center shall be constructed, erected, repaired, renovated, equipped, operated and maintained as a white attendance center for grades one through twelve.

VIII

The eligible school children of the Clarke County Consolidated School District residing in that part thereof described as:

> Section 1, 2, North half of Section 3, Section 10, 11, 12, 13, 14, 23, 24, 25, 26 and 35 in Township 4 North, Range 15 East; All of Township 4 North, Range 16 East, less and except Sections 31, 32, 33, 34 and that portion of Section 35 lying West of Long Creek; All of Township 4 North, Range 17 East, less Section 35; and all of Township 4 North, Range 18 East which is located in Clarke County, Mississippi,

shall be and they are hereby assigned as provided by law by the Party of the Second Part to the said Clarkdale Attendance Center for the full term of this agreement; and, the eligible school children of the Lauderdale County School District residing in that part thereof described as:

> All that part of the old Meehan School District, as the same was defined immediately prior to the abolition of said old Meehan School District by the aforesaid reorganization, located South of old U. S. Highway Number 80,

shall be and they are hereby assigned and legally transferred by the Party of the First Part to the Enterprise Attendance Center of the Clarke County Consolidated School District or its successor for the full term of this agreement. Either party may assign such other students residing in its district to either of said Attendance Centers as it may desire consistent with the facilities of such centers and the ability of such centers to properly provide for the education of said children.

IX

The Board of Education of Clarke County shall lay out all transportation routes and provide transportation for all school children who are entitled to transportation within the Clarke County Consolidated School District to the Clarkdale Attendance Center at the sole expense of said County. The Lauderdale County Board of Education shall lay out all transportation routes and provide transportation for all school children who are entitled to transportation within said district to the Clarkdale Attendance

Center and the Enterprise Attendance Center or its successor at the sole expense of said district.

X

All state funds of every description, except transportation funds, shall follow the child, and shall accrue to and be paid directly by the state to the district in which the child actually attends school, and for this purpose the Clarkdale Attendance Center shall be considered to be in the Lauderdale County School District so long as it shall operate the same.

XI

The total cost of all maintenance, additional teacher's salaries not covered by minimum program funds, repairs, and all other expenses, except transportation, of each district shall be computed at the end of each school year. Such total cost for each district shall be divided by the total number of students in average daily attendance in each district to obtain the "per student cost". The "per student cost" of the Lauderdale County School District as thus obtained shall be multiplied by the number of Lauderdale County Students in average daily attendance in the Clarke County Consolidated School District, and the sum total shall be paid by the Lauderdale County School District unto the Clarke County Consolidated School District on or before the first day of each July. The same procedure shall be used in computing the "per student cost" for the Clarke County Consolidated School District and the "per student cost" so determined shall be multiplied by the number of Clarke County Consolidated

School District students in average daily attendance in the Lauderdale County School District and for this purpose the Clarkdale Attendance Center shall be considered to be in the Lauderdale County School District so long as it shall operate the same, and the total sum thus obtained shall be paid by the Clarke County Consolidated School District unto the Lauderdale County School District on or before the first day of each July.

XII

This contract shall be effective upon its approval by the Lauderdale County Board of Education, the Board of Trustees of Clarke County Consolidated School District, the Clarke County Board of Education and the State Educational Finance Commission of Mississippi, and shall run for a period of twenty-five (25) years thereafter unless sooner terminated by mutual agreement of all parties.

XIII

It is the intention of the parties hereto that they shall work in close cooperation in the operation of the Clarkdale Attendance Center and in the transfer of the students who will attend the Enterprise Attendance Center or its successor and shall do all that is possible to promote the interest and welfare of the children attending said schools.

XIV

This agreement may be amended from time to time by a majority vote of each of said parties, and the concurrence therein of both the Clarke County Board of Education and the State Educational Finance Commission.

XV

The covenants and agreements herein contained shall be binding on the parties hereto and their successors in office.

XVI

The breach of any part of this agreement by either party thereto shall not alter the binding effect of all other covenants and agreements herein contained upon both of said parties.

XVII

The Party of the Second Part shall provide educational opportunities for Party of the First Part students attending school in the Party of the Second Part district equal to that provided for resident students of the Party of the Second Part; and, the Party of the First Part shall provide educational opportunities for Party of the Second Part students attending school in the Party of the First Part district equal to that provided for resident students of the Party of the First Part.

IN WITNESS WHEREOF, the parties hereto have executed the above and foregoing agreement on the day and year first above mentioned.

BOARD OF EDUCATION,
LAUDERDALE
COUNTY, MISSISSIPPI

BY: D. L. Covington
CHAIRMAN OF THE FIRST PART

ATTEST:

/s/ D. B. Johnson
SECRETARY

BOARD OF TRUSTEES OF CLARKE COUNTY
CONSOLIDATED SCHOOL DISTRICT

BY: W. E. Cooper
PRESIDENT
PARTY OF THE SECOND PART

ATTEST:
/s/ Billy Williams
SECRETARY

The Clarke County Board of Education does hereby approve the above and foregoing agreement and agrees to be bound by the terms thereof.

This the ___ day of February, 1962.

BOARD OF EDUCATION,
CLARKE COUNTY, MISSISSIPPI

BY: Lucian Riley
CHAIRMAN

ATTEST:

/s/ Illegible
SECRETARY

APPROVED
State Educational
Finance Committee

By L. D. Pullon
F. H. Taylor, Jr.

APPROVED: RUBEL PHILLIPS, Attorney

EXCERPT FROM THE MINUTES OF THE REGULAR MEETING OF THE STATE EDUCATIONAL FINANCE COMMISSION HELD ON THE 19th DAY OF FEBRUARY, 1962.

CLARKE COUNTY

"Approval of Contract:

"There came on for consideration this day for approval by this Commission a contract entered into on the 13th day of February, 1962, by and between the Board of Education of the Lauderdale County School District of Lauderdale County, Mississippi, and the Board of Trustees of the Clarke County Consolidated School District of Clarke County, Mississippi; and

"It appearing to the Commission that the aforesaid school districts entered into said contract on the date hereinabove set forth in order to cooperate and join in the

construction of school buildings and related school facilities, as provided by Chapter 266, General Laws of Mississippi, 1956; and

"It further appearing to the Commission that said contract and all the terms and provisions thereof has been jointly agreed to and approved by the parties aforesaid and has been approved by the Board of Education of Clarke County, Mississippi; and

"It further appearing to the Commission that approval of the said contract is in the public interest and will promote the welfare of the school students involved and will result in increased efficiency of the operation of the schools in said school districts and that the parties to the contract, as aforesaid, have requested its approval by this Commission; and

"It further appearing to the Commission that for the said reasons and other reasons appearing of record, that the physical, mental, moral, social and economic welfare of the children involved would be best served and promoted if the said contract should be approved.

"THEREFORE, BE IT ORDERED by the State Educational Finance Commission that the contract by and between the Board of Education of the Lauderdale County School District of Lauderdale County, Mississippi, and the Board of Trustees of the Clarke County Consolidated School District of Clarke County, Mississippi, to join and cooperate in the construction of school buildings and other related facilities be and the same is hereby approved.

"BE IT FURTHER ORDERED that a certified copy of this order be forthwith transmitted by the Executive Secretary of the Commission to the governing boards of said school districts, and that said order, when so certified, shall constitute the authority of said boards to proceed in accordance herewi'h.

"This order duly adopted by the State Educational Finance Commission of Mississippi in regular meeting assembled on the 19th day of February, 1962, after the adoption thereof had first been moved by Commissioner Adams, seconded by Commissioner Pope, with the following members voting "Aye", to-wit: Adams, Messer, Miles, Pope, Pullon and Worrell, and the following members voting "Nay", to-wit: None."

* * *

I, Frank J. Lovell, Jr., Executive Secretary of the State Educational Finance Commission of Mississippi, hereby certify that the above and foregoing is a true and correct copy of the order of said State Educational Finance Commission as same appears of record in Minute Book XXI, Pages 6209-6210, of the records of said Commission in my custody and under my control, and that said order was duly and lawfully adopted by said State Educational Finance Commission at a duly called and held regular meeting thereof on the 19th day of February, 1962.

Witness my signature and the seal of the State Educational Finance Commission of Mississippi, this the 13th day of April, 1988.

[illegible]
Executive Secretary

EXCERPT NO: El1-2 Evid.
CAUSE NO: E88-0059 (L)
WITNESS: Stipulation
PAGES: 13

Mar. 6, 1990

United States District Court
Southern District of Mississippi
/s/ Chris Schmitt
Reporter

AGREEMENT BETWEEN THE BOARD OF TRUSTEES OF THE CLARKE COUNTY CONSOLIDATED SCHOOL DISTRICT AND THE BOARD OF TRUSTEES OF THE QUITMAN CONSOLIDATED SCHOOL DISTRICT WITH REFERENCE TO CERTAIN PUPILS RESIDING IN THE STONEWALL ATTENDANCE AREA.

This agreement made and entered into, in quadruplicate, on this the 11th day of June, 1962, by and between the Board of Trustees of the Clarke County Consolidated School District of Clarke County, Mississippi, hereinafter called Party of the First Part, and the Board of Trustees of the Quitman Consolidated School District of Clarke County, Mississippi, hereinafter called Party of the Second Part,

WITNESSETH:

WHEREAS, heretofore pursuant to the provisions of Chapter 12, General Laws of Mississippi, 1953 Extraordinary Session, the schools of Clarke County, Mississippi were reorganized into two consolidated districts, one of which is known as the Clarke County Consolidated School District and the other which is known as the Quitman Consolidated School District, and the State Educational Finance Commission of the State of Mississippi has approved said reorganization as well as two subsequent changes in the boundary line between said districts; and,

WHEREAS, on March 14, 1962, the Board of Education of Clarke County, Mississippi adopted a certain "Order Transferring Certain Territory From the Clarke County Consolidated School District to the Quitman Consolidated School District" by the terms of which order

certain territory heretofore constituting a part of the Clarke County Consolidated School District which is more particularly described as follows, to-wit:

> Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 16, 17 and 18 in Township 3 North, and Sections 27, 28, 29, 31, 32, 33, 34 and 36 in Township 4 North, all in Range 15 East, Clarke County, Mississippi,

and hereinafter referred to as the "Stonewall Attendance Area", was detached from the Clarke County Consolidated School District and annexed to the Quitman Consolidated School District as of July 1, 1962; and,

WHEREAS, prior to the adoption of the aforesaid order on March 14, 1962, the Party of the First Part had completed a long-range building program for the purpose of providing equal facilities for the negro pupils residing in said attendance area, with funds advanced by the State Educational Finance Commission, by the construction of a negro high school attendance center known as the Clarke County High School Attendance Center (c); and,

WHEREAS, the Party of the First Part now has adequate facilities at the Clarke County High School Attendance Center (c) for the continued education of the negro pupils residing in the Stonewall Attendance Area, while the Party of the Second Part does not have adequate facilities for the education of said negro pupils residing in said Stonewall Attendance Area; and,

WHEREAS, the parties hereto are desirous of obtaining and furnishing the best possible school facilities, educational opportunities, and educational advantages for the negro pupils of both districts; and,

WHEREAS, it is considered advisable by the parties hereto to provide for the transfer of the negro pupils residing in the Stonewall Attendance Area to the Clarke County High School Attendance Center (c) on a long term basis; and,

WHEREAS, it is also considered advisable by the parties hereto to provide for the allocation of funds to share in the cost of educating such white pupils as may hereafter be legally transferred from the Stonewall Attendance Area of the Quitman Consolidated School District to the Clarke County Consolidated School District.

NOW, THEREFORE, PREMISES CONSIDERED, it is agreed by and between the Party of the First Part and the Party of the Secont [sic] Part as follows, to-wit:

SECTION 1. The Party of the Second Part does hereby assign and transfer all of the educable negro children residing in that part of the Quitman Consolidated School District hereinabove described and referred to as the Stonewall Attendance Area to the Clarke County High School Attendance Center of the Clarke County Consolidated School District for and during the full term of this agreement.

SECTION 2. All state funds of every description, except transportation funds, shall follow the child, and shall accrue to and be paid directly by the state to the district in which the child actually attends school.

SECTION 3. The total cost paid from local sources of revenue of all maintenance, additional teachers salaries not covered by minimum program funds, repairs, and all other operating expenses, except transportation of the

Quitman Consolidated School District shall be computed separately for negro pupils and for white pupils at the end of each school year. Such total cost for negro pupils shall be divided by the total number of negro pupils in average daily attendance in said district to obtain the negro "per student cost". The negro "per student cost" of said district as thus obtained shall be multiplied by the total number of Quitman Consolidated School District negro students legally transferred and in average daily attendance in the Clarke County Consolidated School District, and the sum total shall be paid by the Quitman Consolidated School District unto the Clarke County Consolidated School District on or before the first day of each July. The cost to the Quitman Consolidated School District for payment of the lowest salaries for teachers employed at the Pachuta, Shubuta and Carmichael Attendance Centers in excess of the minimum program teacher units to which said centers are entitled by reason of their average daily attendance for the preceding year, shall be deducted from such total cost for white pupils and the balance shall be divided by the total number of white pupils in average daily attendance in said district to obtain the white "per student cost". The white "per student cost" of said district as thus obtained shall be multiplied by the total number of Quitman Consolidated School District white students legally transferred and in average daily attendance in the Clarke County Consolidated School District, and the sum total shall be paid by the Quitman Consolidated School District unto the Clarke County Consolidated School District on or before the first day of each July.

SECTION 4. This agreement shall be effective upon its execution by the parties hereto, and its approval by the Board of Education of Clarke County, Mississippi and the State Education Finance Commission of the State of Mississippi, and shall continue for a period of twenty-five (25) years thereafter unless sooner terminated by mutual agreement of all parties.

SECTION 5. It is the intention of the parties hereto that they shall work in close cooperation in the operation of the schools of Clarke County, and in the transfer of students residing in the Stonewall Attendance Area, and shall do all that is possible to promote the interest and welfare of the pupils residing in said Area.

SECTION 6. This agreement may be amended from time to time by a majority vote of each of said parties, and the concurrence therein of both the Board of Education of Clarke County, Mississippi and the State Educational Finance Commission.

Section 7. The covenants and agreements herein shall be binding on the parties hereto and their successors in office.

BOARD OF TRUSTEES,
CLARKE COUNTY
CONSOLIDATED SCHOOL
DISTRICT

BY: /s/ Illegible
Party of the First Part

ATTEST:

/s/ Billy Williams

BOARD OF TRUSTEES,
QUITMAN
CONSOLIDATED SCHOOL
DISTRICT

BY: /s/ Illegible Barry
Party of the Second
Part

ATTEST:

/s/ W. L. Blair

The Board of Education of Clarke County, Mississippi does hereby approve the above and foregoing agreement and agrees to be bound by the terms thereof.

This the 11 day of June, 1962.

BOARD OF EDUCATION,
CLARKE
COUNTY, MISSISSIPPI

BY: /s/ Lucian Riley

ATTEST:

/s/ Illegible H. Hull

Supreme Court, U.S.
FILED
OCT 13 1994
OFFICE OF THE CLERK

No. 94-482

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

ENTERPRISE CONSOLIDATED SCHOOL DISTRICT
by and through Its Board of Trustees,
Petitioner,

v.

THE LAUDERDALE COUNTY, MISSISSIPPI SCHOOL DISTRICT,
by and through Its Board of Trustees, *et al.*,
and the
QUITMAN, MISSISSIPPI SCHOOL DISTRICT,
by and through Its Board of Trustees, *et al.*,
Respondent.

Consolidated With
ENTERPRISE CONSOLIDATED SCHOOL DISTRICT,
Petitioner,

v.

QUITMAN CONSOLIDATED SCHOOL DISTRICT,
Respondent.

On Petition For A Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

TALLY D. RIDDELL
P.O. Box 199
Quitman, MS 39355-0199

PERRY SANSING
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QUESTIONS PRESENTED

Whether the Court of Appeals properly applied Milliken vs. Bradley, 418 U.S. 717 (1974), in reversing the District Court's decision to order interdistrict relief in the absence of a finding by the District Court of an interdistrict constitutional violation?

Whether the Court of Appeals erred in upholding under the clearly erroneous standard the District Court's factual finding that equitable estoppel barred a party from asserting a position inconsisent with that party's conduct and representations over a 26-year period?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

STATEMENT OF FACTS 2

REASONS WHY THE PETITION SHOULD BE DENIED 4

A. The Fifth Circuit's decision regarding estoppel is fact-sensitive and creates no conflict with the decisions of this Court or any court of appeals. In addition, the Fifth Circuit relied on an alternative holding to support its decision. 4

B. The Fifth Circuit's interpretation of Milliken vs. Bradley does not create a conflict with the decisions of any court of appeals. 8

CONCLUSION 10

TABLE OF AUTHORITIES

Page

CASES

Anderson vs. City of Bessemer City,
470 U.S. 564 (1985) 5

City of Richmond vs. United States,
422 U.S. 358 (1975) 7

Goldsboro City Bd. of Educ. vs.
Wayne County Bd. of Educ.,
745 F.2d 324 (4th Cir. 1984) 9

Goodman vs. Lukens Steel Co.,
482 U.S. 656 (1987) 5

Graver Mfg. vs. Linde Co,
336 U.S. 271 (1949) 5

Hoots vs. Pennsylvania,
672 F.2d 1107 (3d Cir. 1982) 9

Jenkins vs. Missouri,
807 F.2d 657 (8th Cir. 1987) 9

Lee vs. Lee County Bd. of Educ.,
639 F.2d 1243 (5th Cir. 1981) 8, 9

Lopez vs. Hale County,
797 F. Supp. 547 (N.D. Tex. 1992),
aff'd mem., ____ U.S. ___,
122 L. Ed 2d 112 (1993) 7

Milliken vs. Bradley,
418 U.S. 717 (1974) . . . . . i, 8, 9

NCAA vs. Board of Regents,
468 U.S. 85 (1984) 5

Shelley vs. Kraemer,
334 U.S. 1 (1948) 7

United States vs. Dallas County Comm'n,
548 F. Supp. 794 (S.D. Ala. 1982),
aff'd in part and rev'd in part on
other grounds, 739 F.2d 1529
(11th Cir. 1984) 7

Williams vs. City of Dothan,
745 F.2d 1406 (11th Cir. 1984) 7

OTHER

Fed. R. Civ. P. 52(a) 2, 5

Robert L. Stern, et al.,
Supreme Court Practice
§ 4.4 (7th ed. 1993) 6

No. 94-482

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1994

ENTERPRISE CONSOLIDATED SCHOOL DISTRICT,
by and through It Board of Trustees,
Petitioner,

v.

THE LAUDERDALE COUNTY, MISSISSIPPI SCHOOL DISTRICT, by and through Its Board of Trustees, et al.,
and the
QUITMAN, MISSISSIPPI SCHOOL DISTRICT,
by and through Its Board of Trustees, et al.,
Respondents,

Consolidated with
ENTERPRISE CONSOLIDATED SCHOOL DISTRICT,
Petitioner,

v.

QUITMAN CONSOLIDATED SCHOOL DISTRICT,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

Respondent Quitman School District respectfully requests that this Court deny the petition for writ of certiorari, which seeks review of the Fifth Circuit's opinion reported at 24 F.3d 671.

STATEMENT OF FACTS

Enterprise mischaracterizes the Fifth Circuit's holding and misstates the record in several instances.

1. Enterprise states that "in 1962, Enterprise and Quitman entered into a twenty-five (25) year contract ceding [the Stonewall area] from Enterprise to Quitman in return for Enterprise's agreeing to educate all black school age children continuing to reside in Stonewall." Pet. at 3. Throughout this litigation, Enterprise has attempted to link the validity of the annexation to the student-transfer contract, which all agree is unconstitutional. Both the District Court and the Court of Appeals rejected Enterprise's position. As the District Court found, the annexation, which was not limited in duration, and the 25-year student-transfer contract were separate parts of a larger compromise that settled the dispute over ownership of Stonewall. App. 6-7, 55. The Fifth Circuit affirmed this factual finding under the clearly erroneous standard of Fed. R. Civ. P. 52(a). "The annexation should be viewed separately from the rest of the agreement. By itself, the annexation is constitutional." App. 50. The Fifth Circuit also held that "even assuming that the Stonewall annexation and [the 1962] transfer agreement are linked, the annexation is not void." App. 55. The annexation, which was accomplished by a statutory procedure separate and distinct from the 25-year student-transfer contract, did not promote segregation. App. 55-57.

2. Enterprise states that it was estopped from "raising the constitutionality of the contract" and that the Fifth Circuit "affirmed the District Court by upholding the contract between Enterprise and [Quitman]." Pet. at 6; see also id. at 10. The Fifth Circuit upheld the validity of the annexation and affirmed the District Court's holding that equitable estoppel prevented Enterprise from challenging the annexation. The validity of the student-transfer contract was not in issue. All parties, including Enterprise, acknowledged the unconstitutionality of that contract. App. 62. In fact, Quitman stopped performing under the student-transfer contract in 1969, and repudiated it in 1977 because it discriminated against blacks. App. 12. Enterprise's suggestion that the District Court or Fifth Circuit upheld the student-transfer contract is simply wrong.

3. Enterprise's reference to "[t]he insulation of the town of Stonewall in its whiteness" suggests that Quitman's annexation was racially motivated. Pet. at 11. The impetus for the annexation, however, was not race but Enterprise's decision to close the Stonewall High School. Parents of the high school students actually initiated the process resulting in the annexation. App. 42-43. Moreover, the territory annexed was clearly defined, and not a "white only" area. Prior to 1962, the area annexed was the "Stonewall Attendance Area" of the Enterprise district and, before then, had comprised the boundaries of a separate school district. Neither the District Court nor the Court of Appeals held that a racial animus motivated the annexation. App. 57.

REASONS WHY THE PETITION SHOULD BE DENIED

A. The Fifth Circuit's decision regarding estoppel is fact-sensitive and creates no conflict with the decisions of this Court or any court of appeals. In addition, the Fifth Circuit relied on an alternative holding to support its decision.

1. The Fifth Circuit's holding that Quitman validly annexed the Stonewall area is based on alternative holdings. The Court of Appeals held that equitable estoppel precluded Enterprise from challenging the annexation and that Quitman's ownership and control over Stonewall is consistent with the final order in the desegregation litigation. App. 41-42, 50. The basis for each holding is briefly reviewed.

During the desegregation litigation in the 1960s, Enterprise admitted in its pleadings, testimony and exhibits that the Stonewall area was a part of Quitman. App. 50-51. After entry of the final desegregation order in 1969, Enterprise continued to recognize that Stonewall had been lawfully annexed by Quitman. "For over twenty-six years, from June 1962 until June 17, 1988, when suit was filed, Enterprise did nothing to indicate that the Stonewall area had not lawfully been annexed to Quitman." App. 51 As a result, "Quitman was unaware that Enterprise would suddenly challenge the annexation after decades of acquiescence." App. 51-52.

The Fifth Circuit affirmed the District Court's factual finding that Quitman relied to its detriment on Enterprise's representations. App. 50. The evidence before the District Court showed that "Quitman planned, budgeted, forecasted, funded, hired teachers and staff members, paid taxes, and maintained school property since [the 1962 annexation] under

the assumption that the Stonewall territory was properly annexed." App. 53. Based on this evidence, the District Court found that equitable estoppel applied. App. 50. Consistent with Fed. R. Civ. P. 52(a), the Fifth Circuit upheld the finding. See Anderson vs. City of Bessemer City, 470 U.S. 564, 573-76 (1985).

Enterprise's Petition is simply an effort to have this Court review the same record in the hope that a different outcome might be reached. Therefore, this issue does not merit review by this Court. See Goodman vs. Lukens Steel Co., 482 U.S. 656, 665 (1987) ("[B]oth courts below having agreed on the facts, we are not inclined to examine the record for ourselves absent some extraordinary reason for undertaking this task. Nothing the [Petitioners] have submitted indicates that we should do so."); NCAA vs. Board of Regents, 468 U.S. 85, 98 n.15 (1984) ("In accord with our usual practice, we must now accord great weight to a finding of fact which has been approved by a court of appeals."); Graver Mfg. vs. Linde Co, 336 U.S. 271, 275 (1949) (Court should not "undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional show of error").

2. Apart from the estoppel issue, the Fifth Circuit also held that "Quitman's control over Stonewall would comport with" the Fifth Circuit's 1969 desegregation order. App. 42. The final order in that litigation was "based upon interdistrict boundaries that assumed the validity of the annexation of Stonewall by Quitman." App. 54. Although no Court ruled specifically on the validity of the annexation, "they did not have cause to do so. All parties, including Enterprise, represented to the court that the annexation was valid." Id. Enterprise neither acknowledges nor challenges this alternative holding by the Fifth Circuit. The presence of an alternative

basis to uphold the annexation militates against granting the Petition. See generally R. Stern, et al., Supreme Court Practice § 4.4, at pp. 172-73 (7th ed. 1993) (conflict in decisions may not merit grant of certiorari if Court can decide case on another ground and thereby avoid reaching issue upon which there is a conflict).

3. Enterprise contends that equitable estoppel cannot be applied to preclude it "from changing its earlier position, even if that position is wrong, ... to comport with newly developed law." Pet. at 8. The underlying premise for Enterprise's argument is incorrect. Enterprise did challenge the constitutionality of the annexation, and the Fifth Circuit rejected Enterprise's argument. App. 57-58. Enterprise has not been prevented from changing its position based on a change in the applicable law. Rather, Enterprise was estopped from challenging the annexation of Stonewall after almost three decades of acquiescence and after representing to the District Court and the Court of Appeals in the desegregation litigation that the Stonewall territory properly belonged in the Quitman district.

No court has prevented Enterprise from acknowledging that the student-transfer contract is unconstitutional. In fact, Enterprise took that position in the Fifth Circuit, App. 62, and again in this Court, Pet. at 10-11.

4. Enterprise fails to cite any authority to support its argument that equitable estoppel cannot bar assertion of a constitutional claim. As the Fifth Circuit pointed out, "[t]he admittedly sparse authority on applicability of equitable estoppel indicates the opposite." App. 52. Two district courts have held that parties could be equitably estopped from arguing constitutional violations, and this Court recently affirmed a three-judge district court's decision that laches, a

doctrine similar to equitable estoppel, could prevent a plaintiff from enjoining unprecleared election changes. Id.[1]

5. Enterprise contends that the "illicit racial motivation" for the 1962 student-transfer contract "should void the entire" compromise agreement, including the annexation, reached between Enterprise and Quitman. Pet. 11. The Fifth Circuit rejected "the idea that an unconstitutional clause in a contract automatically voids the entire contract." App. 57 n.38 (citing Shelley vs. Kraemer, 334 U.S. 1 (1948)).

Furthermore, the annexation did not contribute to segregation in 1962 and does not today. "The Stonewall annexation was no more promotive of segregation than was any of the other pre-desegregation boundary changes among Mississippi's school districts." App. 57. Thus, Enterprise's reliance on City of Richmond vs. United States, 422 U.S. 358 (1975), is misplaced. The annexation of Stonewall was not "taken for the purpose of discriminating against" blacks. Id. at 378.

Throughout its Petition, Enterprise refers or alludes to current segregative effects of the annexation or the student-transfer contract, or both. Pet. at i ("ongoing racially gerrymandered district lines"); id. at 13 (interdistrict constitutional violation in Pennsylvania case "similar to the resulting segregative effects in the Mississippi school districts

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[1] The Fifth Circuit cited Williams vs. City of Dothan, 745 F.2d 1406 (11th Cir. 1984), United States vs. Dallas County Comm'n, 548 F. Supp. 794 (S.D. Ala. 1982), aff'd in part and rev'd in part on other grounds, 739 F.2d 1529 (11th Cir. 1984), and Lopez vs. Hale County, 797 F. Supp. 547 (N.D. Tex. 1992), aff'd mem., ____ U.S. ___, 122 L. Ed 2d 112 (1993).

here described"); id. at 15 (Fifth Circuit upheld "the annexation of [Stonewall] to a school district and enforced student transfers which perpetuated segregation"). The Fifth Circuit ruled, however, that neither the annexation nor the student-transfer contract could support interdistrict relief because these events do not have current segregative effects. App. 59.

B. The Fifth Circuit's interpretation of Milliken vs. Bradley does not create a conflict with the decisions of any court of appeals.

Enterprise purports to find a conflict among the courts of appeals concerning the application of Milliken vs. Bradley, 418 U.S. 717 (1974), which holds that interdistrict relief can be imposed in a desegregation case only if "there has been a constitutional violation within one district that produces a significant segregative effect in another district." Id. at 744. Thus, "without an interdistrict violation and interdistrict effect, there is no constitutional wrong calling for an interdistrict remedy." Id. at 745. A review of the cases cited by Enterprise on pages 12 and 13 of its Petition reveals no conflict on this issue. The differences among these cases arise solely from the evidence in each case, not from their application of Milliken.

Here, the Fifth Circuit reversed the District Court's interdistrict remedy because no school district committed a constitutional violation that had current segregative effects in another district. App. 58-59. The court relied on Milliken and Lee vs. Lee County Bd. of Educ., 639 F.2d 1243 (5th Cir. 1981), which interpreted Milliken to permit an interdistrict remedy only "when there is proof of unconstitutional governmental action that has been a 'substantial cause' of a 'significant' interdistrict segregative

effect, and where an interdistrict desegregation plan is necessary in order to remedy segregation 'directly' caused by this constitutionally impermissible conduct." Id. at 1256. The Fifth Circuit's holding does not create a conflict. In fact, Lee's interpretation of Milliken has been followed in two of the cases cited by Enterprise. See Jenkins vs. Missouri, 807 F.2d 657, 666 (8th Cir. 1987); Goldsboro City Bd. of Educ. vs. Wayne County Bd. of Educ., 745 F.2d 324, 330-31 (4th Cir. 1984).

In the context of the Milliken standard, the facts of each case will determine whether an interdistrict remedy is proper. For example, in Goldsboro, the Fourth Circuit stated that the "present case differs from those cases where the courts have found an interdistrict remedy to be appropriate." 745 F. 2d at 330. In both Lee and Goldsboro, the appellate courts summarized the cases cited by Enterprise, pointing out that some presented evidence to support interdistrict relief and others did not.[2]

Rather than reveal a conflict, the cases cited by Enterprise demonstrate quite clearly that the facts of each case will determine the propriety of interdistrict relief under the Milliken standard. In the absence of an actual conflict, the fact-based issue raised by Enterprise is not the type that merits

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[2] The two cases not discussed in Goldsboro or Lee do not aid Enterprise's efforts to create a conflict. In Hoots vs. Pennsylvania, 672 F.2d 1107, 1120 (3d Cir. 1982), the court applied Milliken and noted that the interdistrict remedy "was appropriate in this case because [the district court] concluded that the violation itself was interdistrict in nature." In Jenkins vs. Missouri, 807 F.2d at 666, the court, as noted, relied on Goldsboro and Lee and held that the absence of a constitutional violation precluded interdistrict relief.

review by this Court.

CONCLUSION

Respondent Quitman School District respectfully requests that the Petition for a Writ of Certiorari be denied.

RESPECTFULLY SUBMITTED,

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Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Courts cannot allow the fundamental constitutional right of innocent citizens to attend desegregated schools to be waived by the failure of a school board to seek a timely remedy against intentional segregation. The effect of the Fifth Circuit's holding equitable estoppel to be a bar to Enterprise School District's effort to void a racially charged school annexation contract is to cause the Enterprise School to go from approximately 70% to 91.4% white, by the assignment of the Stonewall area black students to the majority black Quitman School. The Court of Appeals' holding that discriminatory portions of the annexation contract are racially severable is contrary to *Shelley v. Kramer,* 334 U.S. 1 (1948). The result is that the original intent of the annexation contract has been realized. School segregation has become court approved.

A racially charged contract annexing territory so long as the students remain segregated by race certainly meets *Milliken's* requirement that racial discrimination of one school district have a significant segregative effect on another school district. Contrary to the contentions of the Respondent, there is a split in the circuits on the application of *Milliken v. Bradley,* 418 U.S. 717 (1974) to similar

sets of facts. *See, e.g., Hoots v. Pennsylvania*, 672 F.2d 1107, 1121 (3d Cir. 1982).

Respectfully submitted,

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